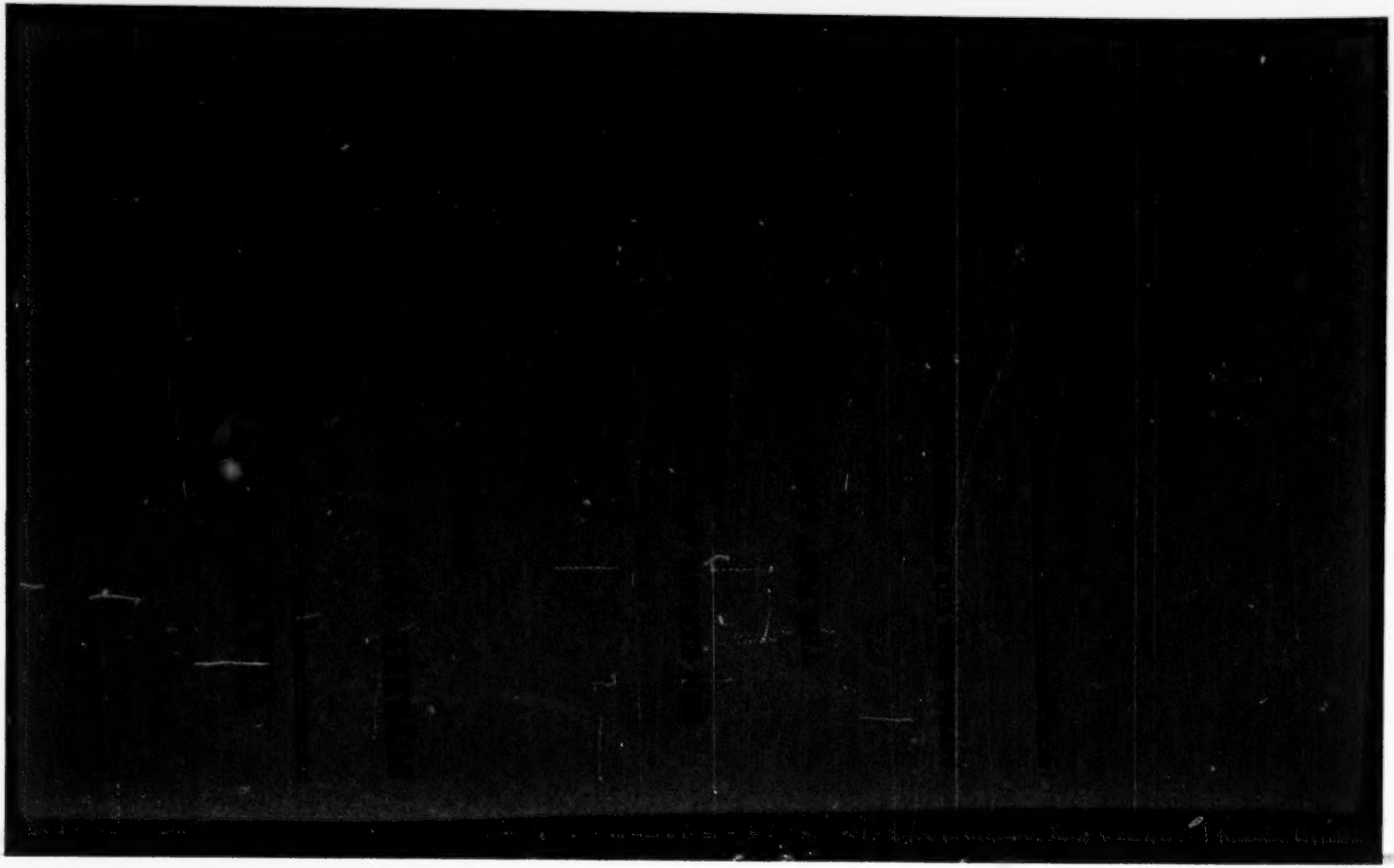

(24,430)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 686.

THE EXPORT AND IMPORT LUMBER COMPANY, APPELLANT,

vs.

THE PORT BANGA LUMBER COMPANY.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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1 Fourteenth Judicial District.

THE UNITED STATES OF AMERICA,
Philippine Islands, Moro Province:

In the Court of First Instance of the District of Zamboanga.

Civil Cause No. 275.

PORT BANGA LUMBER COMPANY, Plaintiff,
versus
EXPORT & IMPORT LUMBER COMPANY, Defendant.

Complaint.

Now comes the plaintiff by its attorneys Yeager & Gibbens and to the Court sets forth:

1. That the plaintiff and the defendant are corporations duly organized under the laws of the Philippine Islands for the purpose of engaging in commerce therein.

2. That in or about the months of March and April, 1910, the plaintiff company, by F. P. Williamson, its Vice-President, and the defendant company, by W. W. Payne, its President, made and entered into a verbal contract to sell to the China Import and Export Lumber Company a quantity of logs on joint account, that is to say, on a half and half basis, the plaintiff agreeing to supply the logs and the defendant to obtain the purchaser.

3. That on the 10th day of June, 1910, said defendant company, by W. W. Payne, its President, through false and fraudulent statements and representations, induced the plaintiff company, by
2 F. P. Williamson, its Vice-President, to make a contract which otherwise would not have been made; copy of said contract is attached to this complaint marked "Exhibit A", and forms an integral part of the same.

4. That the plaintiff has just discovered that the false and fraudulents statements and representations mentioned in the third paragraph above were false and fraudulent, respectively.

Wherefore, the plaintiff requests the Court to declare said contract marked "Exhibit A" null and void; to adjudicate the interests of both parties in accordance with the verbal contract antecedent to said contract marked "Exhibit A"; to sentence the defendant to pay the costs and compensations of this suit; and any other remedy provided by law.

Zamboanga, November 14, 1910.

(Sgd.) YEAGER & GIBBENS,
Attorneys for Plaintiff.

The foregoing complaint was filed by the attorneys Messrs. Yeager & Gibbens on the 14th day of November, 1910, at 10 a. m.

(Sgd.) JOSE ESQUIAGA, *Clerk*,
By M. A. ASUNCION, *Copyist.*

(Exhibit "A" attached to Amended Complaint.)

3 On the 13th day of December, 1910, the defendant company interposed a demurrer to said complaint upon the following grounds: (1) That the allegations of the same did not constitute a cause of action; and (2) That the said complaint was ambiguous, unintelligible and vague.

On the 21st day of December, 1910, the Court entered an order overruling the motion of the plaintiff company asking that the defendant company be declared in default by reason of not having answered the complaint, upon the ground that the defendant company had opportunely interposed its demurrer to the complaint before the expiration of the period for presenting its answer.

On the 12th day of January, 1911, the Court overruled the demurrer interposed by the defendant company against the complaint, allowing it ten days within which to present its answer, against which resolution said defendant company duly excepted.

On the 20th day of January, 1911, the defendant company presented its answer and counterclaim, which later were amended after the plaintiff company had amended its original complaint.

On the 14th day of February, 1911, the plaintiff company interposed a demurrer to the counterclaim presented by the defendant company, basing it upon the ground that the allegations contained in said counterclaim did not constitute a cause of action and
4 that said counterclaim was ambiguous and vague, for which reasons it asked to be absolved from said counterclaim, with costs.

On the 18th day of February, 1911, the plaintiff company presented a motion asking permission to amend its complaint, and the Judge in an order dated July 26, 1911, gave permission to the plaintiff to amend its complaint.

5 Fourteenth Judicial District.

THE UNITED STATES OF AMERICA,
Philippine Islands, Moro Province:

In the Court of First Instance of the District of Zamboanga.

Civil Cause No. 275.

PORT BANGA LUMBER COMPANY, Plaintiff,
versus
EXPORT & IMPORT LUMBER COMPANY, Defendant.

Deposition.

On this the 21st day of November, 1910, in the sala of the Court of First Instance in Zamboanga, Moro Province, Philippine Islands,

appeared the above named plaintiff by *their* attorneys and the above named defendant by William W. Payne, President of the said defendant company and the said plaintiff and defendant mutually stipulated and agreed to the taking of the depositions of Carl L. Seitz and William W. Payne, the said parties hereto further stipulating and agreeing that the said depositions should be taken in the English language and all requirements as to notice, time and place waived and that the following shall be read in the trial of the case as the testimony of the said Carl L. Seitz and William W. Payne, subject however to all objections as to competency, materiality and relevancy.

CARL L. SEITZ being duly sworn upon his oath states and declares as follows in response to the following interrogatory-.

Q. State your name, age, residence and occupation.

6 A. My name is Carl L. Seitz, age 31, residence Shanghai, China and I am the general manager of The China Import & Export Lumber Company, Limited.

Q. Do you know William W. Payne, President of the Export and Import Lumber Company, a corporation whose principal office and business is in Manila, Philippine Islands.

A. I do.

Q. State whether or not The China Import & Export Lumber Co., Ltd., by you as general manager made and entered into a contract on the 6th day of May, 1910, by and with the Export & Import Lumber Co. of Manila, which contract was executed on the part of the Export & Import Lumber Co. by William W. Payne as President.

A. Such a contract was made and entered into on said date by and between the parties named.

Q. I hand you herewith an instrument, marked Exhibit A, of the plaintiff and request that you examine same and state to the Court what it is.

A. The document marked Exhibit A of the Plaintiff is a true and exact copy of the contract mentioned in the previous question, which contract was executed by and between the said China Import & Export Lumber Co., Ltd., and the Export & Import Lumber Co. of Manila.

Q. Calling your attention to the signature of the Export & Import Lumber Co., I will ask you if you know of your own knowledge who signed the name of the Export & Import Lumber Co. to said instrument.

A. The name of the Export & Import Lumber Co. was signed by W. W. Payne and the signature which purports to be the

7 signature of William W. Payne I know of my own knowledge to be the signature of said William W. Payne.

Q. Who executed the said instrument on behalf of the China Import & Export Lumber Co., Ltd.

A. Said contract was executed on behalf of the China Import & Export Lumber Co., Ltd., by me as general manager.

Q. State if you know where the originals of the said contract marked Exhibit A of the plaintiff are at the present time.

A. One original is in my possession and the other original copy was retained by Mr. William W. Payne.

(Signed) C. L. SEITZ.

WILLIAM W. PAYNE being duly sworn upon his oath states and declares as follows in response to the following interrogatories:

Q. State your name, age, residence and occupation.

A. My name is William W. Payne, age 30, residence Manila, P. I., president of the Export & Import Lumber Co. of Manila, P. I.

Q. Do you know Carl L. Seitz, and if so what is his occupation.

A. I know him and said Carl L. Seitz is general manager of the China Import & Export Lumber Co., Ltd.

Q. State whether or not there was a contract made and entered into on the 6th day of May, 1910, by and between the China Import & Export Lumber Co., Ltd., and the Export & Import Lumber Co., and if so by whom was same executed.

A. Such a contract was executed on said date, by the China
8 Import & Export Lumber Co., Ltd., by Carl L. Seitz, general manager, and the Export & Import Lumber Co. of Manila, P. I., by me, William W. Payne, as president.

Q. Handing the witness document marked Exhibit A of the plaintiff I will ask you to examine the same and state to the court what it is.

A. It is a copy of the said contract mentioned in the preceding answer.

Q. I will ask you to examine the signature of William W. Payne and ask you whose signature that is.

A. That is my signature. Export & Import Lumber Co., by Wm. W. Payne, Pres't.

Q. State whether or not the document marked Exhibit A, is a true and perfect copy of the original contract made and entered into by and between The China Import & Export Lumber Co., Ltd., and the Export & Import Lumber Co., Manila.

A. It is a true copy of said agreement, which said agreement is dated the 6th day of May, 1910.

(Sgd.) WM. W. PAYNE.

The undersigned, judge of the Court of First Instance, of the 14th Judicial District, certify that the above named witnesses, Carl L. Seitz and William W. Payne, were by me duly sworn, that thereupon the foregoing depositions were respectively read to the respective witnesses, whom thereupon signed the same in my presence; that said depositions were taken in the Court of First Instance, in Zamboanga, Moro Province, P. I., on this the 21st day of November, 1910, between the hours of 8 and 12 of said day, before me.

(Sgd.) HERBERT D. GALE,

[COURT SEAL.] *Judge of Court of First Instance,*
14th Judicial District.

For Exhibit "A" of Plaintiff see Exhibit "A" attached to Amended Complaint.

9 Fourteenth Judicial District.

THE UNITED STATES OF AMERICA,
Philippine Islands, Moro Province:

In the Court of First Instance of the District of Zamboanga.

Civil Case No. 275.

PORT BANGA LUMBER COMPANY, Plaintiff,
versus
EXPORT & IMPORT LUMBER CO., Defendant.

Annul*l*ment of Contract and Damages.

Amended Complaint.

Now comes the above named plaintiff by its attorneys Yeager & Gibbens, and, leave of Court first having been obtained, presents this amended petition and as cause of action against above named defendant states:

I. The plaintiff and defendant are corporations duly organized and existing according to the laws of the Philippine Islands for the purpose of engaging in commerce therein and, the principal office of the plaintiff *in* in Zamboanga, Moro Province, P. I., and that of defendant in Manila, P. I.

II. That on or about March or April of 1910, the plaintiff through F. P. Williamson, its Vice-President, and the defendant, through W. W. Payne, its President, made and entered into an oral contract whereby the said parties, plaintiff and defendant, should make and execute a contract to supply an order of pagatpat logs to certain parties in China, which contract should be carried out upon a joint account basis that is after each party thereto had deducted its respective expenses, the profits should be equally
10 divided, and the defendant herein named should obtain said contract and the plaintiff herein should furnish the logs to fulfill same.

III. And on or about the sixth day of May, 1910, there was made and executed between the Export and Import Lumber Company, defendant herein, and the said China Import and Export Lumber Company, Limited, a contract for the sale of Forty thousand (40,000) cubic feet, more or less, of Pagatpat logs of various lengths and dimensions by defendant herein to said China Import and Export Lumber Company, Limited, at the price of ninety (90) cents, U. S. currency or One Peso and eighty centavos (P1.80) Conant, per cubic foot, copy of which contract is hereto attached, marked "Exhibit 'A'" and forms an integral part of this petition.

IV. That subsequent to the execution of the contract marked "Exhibit A" between defendant herein and the China Import and Export Lumber Company, Limited, said W. W. Payne, President of the defendant herein, repeatedly, falsely and fraudulently represented and stated to plaintiff herein and to the officers of said plaintiff company that the defendant herein had signed and executed the aforesaid contract marked "Exhibit A" but that the best price which could be obtained was fifty-five (55) centavos conant per cubic foot; that he, the said W. W. Payne, had spent large sums of money while in China, and in entertaining the representative of the China Import and Export Lumber Company, Limited, while said representative was in Manila; that said monies had been expended for the purpose of obtaining the execution of the contract marked "Exhibit A"; that he, said Payne, had no record or account
11 of said expenditures; that if the contract set out in paragraph II of this petition, providing for the fulfillment of the contract marked "Exhibit A," should be carried out upon the basis of joint account as previously agreed, that he, said Payne, could furnish no record or account of said expenditures and the presentation of an account of several thousand pesos would make it appear that he was defrauding plaintiff herein; but that, if a contract should be signed and executed by and between plaintiff and defendant herein providing for the sale of the aforesaid forty thousand (40,000) cubic feet of Pagatpat logs by plaintiff to defendant at the price of forty (40) centavos conant per cubic foot, in view of the price of fifty-five (55) centavos conant per cubic foot obtained by defendant from the China Import and Export Lumber Company, Limited, and in view of the other facts set out in this paragraph, then, and for those reasons, the stated price of forty (40) centavos per cubic foot to plaintiff company and the balance of fifteen (15) centavos per cubic foot to defendant company would be a just partition of the profits to be obtained and would be approximately the same thing as the joint account basis aforesaid.

V. That each and every one of the statements and representations set out in paragraph IV and made by W. W. Payne, President of the defendant herein, were false and fraudulent and were known to be false and fraudulent to the said W. W. Payne, President, and each and every one of said statements and representations was made with the purpose and intention of deceiving and defrauding the plaintiff herein and for the further purpose of inducing the plaintiff herein to consent to the annulment of the oral agreement set out in paragraph II hereof and to sign and execute a contract
12 of sale of the aforesaid forty thousand (40,000) cubic feet of pagatpat logs to the defendant herein at the price of forty (40) centavos conant per cubic foot.

VI. That by reason of the said false and fraudulent statements of W. W. Payne, President of the defendant company, the plaintiff herein was deceived and defrauded and induced to sign and execute, and on June 10, 1910, did sign and execute a contract of sale of the said forty thousand (40,000) cubic feet of Pagatpat logs to the

defendant herein at the rate and price of forty (40) centavos conant per cubic foot, copy of which contract is hereto attached marked "Exhibit B" and forms an integral part of this petition.

VII. That during the months of October and November the plaintiff herein delivered to defendant herein and defendant accepted for delivery to said China Import and Export Lumber Company, Limited, the amount of thirty two thousand and thirty two (32,032) cubic feet of Pagatpat logs and the defendant herein immediately delivered the aforesaid logs to, and the same were accepted and paid for by the China Import and Export Lumber Company, Limited, the logs having been loaded on a steamer at the mill of the plaintiff herein.

VIII. That subsequent to the aforesaid delivery to and acceptance by the China Import and Export Lumber Company, Limited, of the said thirty two thousand and thirty two (32,032) cubic feet of Pagatpat logs the plaintiff herein accident-ly learned that the defendant herein was receiving ninety (90) cents, U. S. currency, per cubic foot and not fifty five (55) centavos conant as had been falsely and fraudulently stated and represented by defendant herein.

13 IX. That plaintiff herein has repeatedly demanded of defendant the fulfillment of the contract between plaintiff and defendant as said contract is set out in paragraph II hereof and defendant has refused and continues to refuse to fulfill and comply with said contract and has refused and still refuses to settle with the plaintiff herein for the aforesaid thirty two thousand and thirty two (32,032) cubic feet of logs.

X. That in cutting, hauling, trimming and preparing the logs and timbers set out in contract marked "Exhibit B" and in otherwise fulfilling said contract marked "Exhibit B", the plaintiff herein has expended the sum of Fourteen thousand six hundred and twenty-two Pesos, and eighty-six centavos (P14,622.86), Philippine currency, and copy of the expenditures so made is hereto attached, marked "Exhibit C" and forms an integral part hereof.

XI. That, for the reasons set out in this amended petition, the defendant herein is indebted to plaintiff herein in the sum of thirty six thousand and forty Pesos, and twenty-three centavos (P36,040.23), Philippine currency, that is to say, one half of the sum obtained by deducting fourteen thousand four hundred and twenty-two Pesos and eighty-six centavos (P14,422.86), Philippine currency, the expenses incurred as set out in paragraph X. from fifty-seven thousand six hundred and fifty-seven Pesos and sixty centavos (P57,657.60), Philippine currency, the value of said thirty-two thousand and thirty-two (32,032) cubic feet of logs at One Peso and eighty centavos (P1.80), Philippine currency, or twenty-

14 one thousand six hundred and seventeen Pesos and thirty-seven centavos (P21,617.37), Philippine currency, plus the sum of fourteen thousand four hundred and twenty-two Pesos and eighty-six centavos (P14,422.86), Philippine currency, expended as aforesaid by plaintiff herein.

Wherefore plaintiff prays:

(1) That the contract between plaintiff and defendant herein which contract is marked "Exhibit B" be declared null and void;

(2) That the prior contract as set out in paragraph II. hereof be declared to be in full force and effect;

(3) That judgment be rendered in favor of plaintiff and against defendant in the sum of thirty-six thousand and forty Pesos and twenty-three centavos (P36,040.23), Philippine currency, with costs of suit;

(4) For any other remedy or redress provided by law.

Zamboanga, Moro Province, P. I., February 25, 1911.

(Signed) YEAGER & GIBBENS,
Attorneys for the Port Bangu Lumber Co. Plaintiff.

Presented the foregoing amended petition by Yeager and Gibbens, attorneys for the plaintiff company, this 25th day of February, 1911, at 12:30 P. M.

(Sgd.) FELIPE FABIAN,
Deputy Clerk of the Court.

15 EXHIBIT "A."

Memorandum of Agreement between The China Import & Export Lumber Co., Ltd. (hereinafter described as "the Buyers"), and the Export & Import Lumber Co. of Manila, P. I. (hereinafter described as "the Sellers"), for the purchase by the said Buyers from the said Sellers of a quantity of Logs of about 40,000 (forty thousand) Cubic feet English measure of the Philippine Pagatpat Wood from the District of Zamboagna in the Island of Mindanao of a quantity and color as per sample submitted by the Sellers and sealed by the parties hereto.

The Specifications of Timber required by the Buyers is hereto appended and the Sellers shall provide round logs of the diameters and lengths as therein set forth or larger,—that is to say, the lengths may exceed those specified up to 10% and the diameters may exceed those specified up to 20%.

The logs delivered shall be of good quality in that they shall be free from rot or rotten spots, large loose or rotten knots, shakes or serious defects of a nature to make timber unfit for use for substantial constructional purposes. Therefore all timbers delivered shall be sound, strong, reasonably straight and free from serious defects impairing its strength.

It shall be allowable for the Sellers to supply not exceeding 10% (ten per centum) of the logs with defective hearts at the butt only.

Said defective hearts shall be plugged with neat wooden plugs
16 properly fitted so as not to be unsightly to the eye. Rotten hearts where exposed at the butt end shall not exceed 4″ in diameter in logs under 30 inches in diameter nor 5″ in diameter in logs over 30 inches in diameter. The wood immediately surrounding said rotten hearts shall be sound and free from dote or other serious defects.

Measurements.—All timber supplied by sellers shall on delivery be measured and the contents thereof in cubic feet English measure shall be ascertained as hereunder set forth,—

The circumference of the roung log (excluding bark) shall be taken at the center of the length of the log in English inches; divided by 4 and the product squared;—then multiply this square (of the said ¼ of the circumference) by the length of the log in English feet measure and divide by 144;—the product shall be the contents in cubic feet to be paid for by the Buyers.

Formula.—$\frac{C'' \div 4)^2 \times L'}{144} =$ Cubic Feet.

Example.—A log in circumference 62.8″ and in length 30′.

62.8″	÷ 4	15.7
15.7	x 15.7	246.5
	x 30	7395.0
	÷ 144	51¼ (fifty-one

and one-third cubic feet).

Price.—The Buyers shall pay the Sellers the sum of Gold Dollars cents ninety ($.90) per cubic foot of timber delivered
17 and stowed free on board at loading port. All export due, taxes and Government or local Charges at loading port of whatsoever nature to be borne by Sellers.

Payment.—The Buyers undertake to establish a credit in favor of the Sellers for G. $45.000. against which the Sellers may draw at four months' sight at par with interest for account of Buyers on delivery to Bank of shipping documents and certificate of Inspector appointed by Buyers. A reasonable cash advance to G. $10,000 will be granted by Buyers to Sellers as required for the logging operations.

Delivery.—The logs shall be delivered free on board and stowed at an open port in the Philippine Island of Mindanao, presumably Port Banga, which port or any other port named by Sellers is guaranteed by Sellers to be a safe harbor with a depth of water sufficient to enable a steamer to comfortably enter and leave port with water draught of 26 feet. The Sellers further guarantee that such port is a port of entry and clearance to which vessels of any nationality can proceed to load for foreign ports.

Sellers agree to have the cargo ready for shipment within about three months. In the event of said cargo not being ready for shipment on or before the 30th of September, 1910, the Sellers shall pay the Buyers damages at the rate of 3% (three per centum) for each and every week of delay commencing from the first day of October, 1910.

Similar damages are payable for late delivery by the Buyers to their clients in China who have purchased this timber and it is understood as between the parties hereto that in the event of damages arising for late delivery, the Sellers shall pay to the Buyers
18 the actual damages which the Buyers may suffer through them up to said three per cent per week on the f. o. b. value.

In the event of part of the cargo being delivered the damages shall be payable only on the part of the cargo remaining undelivered, plus any loss in freight which may be suffered by the Buyers through arrangements having to be made for shipment of any small remaining parcel to the port of Tongku, China.

So soon as the cargo is ready for shipment the Buyers shall be informed thereof by cablegram by the Sellers and the Buyers undertake within sixty days to send a steamer or steamers to load the timber, of sufficient capacity, power of winches and gear to handle the cargo. Sellers undertake to load the logs onto said steamer or steamers as quickly as said steamer (s) can take same.

Inspection.—Shall be made at the port of shipment by a representative appointed by the Buyers, who shall inspect the cargo on beach and whose acceptance of the timber shall constitute acceptance under this contract, but the Sellers shall deliver the cargo alongside the steamers chartered to carry same and shall stow said cargo in the holds of said steamers free of charge.

In witness whereof, we, the undersigned, have hereunto set our hands this sixth day of May, nineteen hundred and ten.

EXPORT & IMPORT LUMBER CO.,
By WM. W. PAYNE, *Pres't.*
THE CHINA IMPORT & EXPORT LUMBER CO., LTD.,
By C. L. SEITZ, *General Manager.*

Witness:
A. B. ADAMS.

19 Pillars, Straight.

Pcs.	Length.	Diameter, length, end.
16	19′	24″)
14	35′	30″) Or larger.
4	42′	33″)
34		

Roof Timbers.

34	23′	20″ Center.
8	19′	20″ "
16	28′	20″ "
58		

Timbers to be Cut Into Square Beams.

53	23′	24″ Diam., center.
20	23′	35″
15	38′	40″ Clear as possible.
2	45′	40″ " " "
7	27′	40″
8	40′	40″ Clear as possible.
105		

Timber to be Cut up Small.

Lengths Exact or Over Sizes, Approximate.

2	22′	30″
16	30′	25″
3	28′	32″
7	25′	30″
12	23′	33″
8	17′	35″
24	24′	27″
9	36′	33″
6	39′	27″
2	28′	27″
14	28′	27″
103		

About 10 Logs as large and as long as possible:

Say 1 pce. 45′
2 " 42′
3 " 40′
4 " 38′

In the event of timbers not being straight they shall be delivered sufficiently large in diameter in excess of the measurements specified so that straight timbers of sizes specified can be cut therefrom.

EXPORT & IMPORT LUMBER CO.,
By WM. W. PAYNE, *Pres't.*
THE CHINA IMPORT & EXPORT LUMBER CO., LTD.,
By C. L. SEITZ, *Gen'l Mgr.*

Witness:
A. B. ADAMS.

20 "EXHIBIT B."

Memorandum of Agreement Between the Export & Import Lumber Co. (Hereinafter Described as the Buyers) and Port Banga Lumber Co. (Hereinafter Described as the Sellers) for the Purchase of a Quantity of Logs of About 40,000 *(Forty Thousand) Cubic Feet, English Measure, of Philippine Pagatpat.*

The specifications of the timber required is hereto appended and the sellers shall provide logs of the lengths and diameters as therein set forth or larger; that is to say, the lengths and diameters may exceed those specified up to ten per cent (10%); or in the case of the diameters, they may exceed those specified up to twenty per cent (20%).

The logs delivered shall be of good quality in that they shall be free from rot or rotten spots, large loose or rotten knots, shakes or serious defects of a nature to make the timber unfit for use for substantial constructional purposes. Therefore all timbers delivered shall be strong, sound, reasonably straight and free from serious defects impairing its strength.

It shall be allowable for the sellers to supply not exceeding ten per cent (10%) of the logs with defective hearts, at the butt only. Said defective hearts shall be plugged with neat wooden plugs properly fitted so as not to be unsightly to the eye. Rotten hearts where exposed at the butt end shall not exceed 4" (four inches) in diameter in logs under thirty inches in diameter nor 5" (five inches) in diameter in logs over thirty inches in diameter. The wood immediately surrounding said rotten heart shall be sound
21 and free from dote or other serious defects.

Measurements.—All timber supplied by sellers shall on delivery be measured and the contents thereof shall be ascertained as hereinunder set forth:

The circumference of the round log (excluding bark) shall be taken at the center of the length of the log in English inches; divided by four and the product squared; then multiply this square (of the said quarter of the circumference) by the length of the log in English feet measure and divide by 144; the product shall be the contents in English cubic feet to be paid for by the buyers.

Price.—The buyers shall pay the sellers the sum of forty (40) centavos, Philippine currency per English cubic foot of timber delivered and stowed free on board at loading port. All export dues, taxes and government or local charges of whatsoever nature at loading port to be borne by the sellers.

Delivery.—The logs shall be delivered free on board and stowed at an open sub-port in the Philippine Islands, which port shall be guaranteed by the sellers to be a safe harbor with a depth of water at low tide sufficient to enable a steamer drawing twenty-six (26) feet to enter and leave without risk.

Sellers agree to have the cargo ready for shipment by the fifteenth of August. In the event of said cargo not being ready for shipment by September 30, 1910, the sellers shall pay the buyers damages at the rate of three (3) per cent for each and every week of delay commencing with October 1, 1910.

In the event of failure on the part of sellers to deliver within the date specified (September 30, 1910) the said sellers shall
22 pay to the buyers only such damages as the said buyers (Export & Import Lumber Co.) shall suffer at the hands of the China Import & Export Lumber Co., to whom the buyers are under contract to deliver the within mentioned logs prior to October 1, 1910.

So soon as the cargo is ready for shipment the buyers shall be informed thereof by cablegram by the sellers, and the buyers undertake within sixty days to send a steamer to load the timber.

Sellers undertake to load the cargo onto said steamer as quickly as said steamer can take them. Inspection shall be made at the

point of shipment by a representative appointed by the buyers, whose acceptance of the timber shall constitute acceptance under this contract, so far as quality is concerned, but the sellers shall deliver the cargo alongside the steamer or steamers chartered to carry same and shall stow said cargo in the holds of said steamer.

In witness whereof, we, the undersigned have hereunto set our hands this tenth day of June, 1910.

EXPORT & IMPORT LUMBER CO.,
(Sgd.) By W. W. PAYNE, *President.*
PORT BANGA LUMBER CO.,
(Sgd.) By F. P. WILLIAMSON, *Vice-President.*

Witness:
(Sgd.) P. G. STERNE.

Presented by Yeager & Gibbens on February 25, 1911, at 12:30 p. m.

(Sgd.) FELIPE FABIAN,
Deputy Clerk.

23 *Specifications of Pagatpat Logs.*

Pillars.

Pieces.	Length, Ft.	Diameter; small end.
16	19	24" Or larger.
14	35	30"
4	42	33"
34		

Roof Timbers.

34	23	20	Center diameter.
8	19	20	" "
16	28	20	" "
58			

Timbers (to be Cut into Square Beams).

53	23	24	Center diameter.
20	23	35	" "
#15	38	40	" "
# 2	45	40	" "
# 7	27	40	" "
# 8	40	40	" "
105			

#To be as clear as possible.

Timber (to be Cut up Small) Lengths Exact or Over, Sizes Approximate Only.

2	22	30
16	30	25
3	28	32
7	25	30
12	23	33
8	17	35
24	24	27
9	36	33
6	39	27
2	28	27
14	28	27
103		

About 10 logs as large and as long as possible.

Say 1 piece 45′
2 " 42′
3 " 40′
4 " 38′

In the event of timbers not being straight they shall be
24 delivered sufficiently large in diameter in excess of the measurements specified so that straight timbers of sizes specified can be cut therefrom.

PORT BANGA LUMBER CO.,
(Sgd.) By F. P. WILLIAMSON, *Vice-President.*
EXPORT & IMPORT LUMBER CO.,
(Sgd.) By W. W. PAYNE, *President.*

Witness:
(Sgd.) P. G. STERNE.

June 10, 1910.

Presented by Yeager & Gibbons on the 25th day of February, 1911, at 12:30 p. m.
(Sgd.) FELIPE FABIAN,
Deputy Clerk.

25 "EXHIBIT C."

List of Costs and Expenses Incurred by the Port Banga Lumber Company in Carrying Out Contract to Supply Pagatpat Logs.

1910.			
June.	Total paid out to laborers for wages and food	....	P1,026.29
July.	Ditto	....	1,288.24
August.	Ditto	....	1,298.20
September.	Ditto	....	1,644.89
October.	Ditto	....	3,568.12
November.	Ditto	....	672.12
Use of launch Mollie B during August, September, October and November		.....	3,400.00
Use of launch Scotia during August		.....	225.00
Services of Frank B. Redding from September 19, 1910, to night of November 15, at $300 per month		.....	579.00
Services of F. P. Williamson from October 13 to night of October 31, at $300 per month		.....	180.00
Total Expense		.....	P14,422.86

Presented by Yeager & Gibbens on the 25th day of February, 1911, at 12:30 p. m.

(Sgd.) FELIPE FABIAN,
Deputy Clerk.

26 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Moro Province, 14th Judicial District.

Cause No. 275.

PORT BANGA LUMBER CO., Plaintiff,
versus
EXPORT & IMPORT LUMBER CO., Defendant.

Demurrer.

Comes the defendant company, through its attorneys A. D. Gibbs and Chas. A. McDonough, and interposes a demurrer to the amended complaint presented in this cause on the 25th day of February, 1911, on the following grounds:

1st. That the allegations contained in said amended complaint do not constitute a cause of action; and

2nd. That said amended complaint is ambiguous, unintelligible and vague.

Zamboanga, July 28, 1911.

(Signed) A. D. GIBBS,
CHAS. A. McDONOUGH,
Attorneys for Defendant Company.

The foregoing demurrer having been overruled by the court on July 29, 1911, counsel for the defendant on the same date filed the following exception:

27 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Moro Province, 14th Judicial District.

Cause No. 275.

PORT BANGA LUMBER CO., Plaintiff,
versus
EXPORT & IMPORT LUMBER CO., Defendant.

Exception.

Comes the defendant company, through its attorneys A. D. Gibbs and Chas. A. McDonough, and excepts to the order of the 29th of July, 1911, overruling the demurrer to the amended complaint.

Zamboanga, July 29, 1911.

(Signed) A. D. GIBBS,
CHAS. A. McDONOUGH,
Attorneys for Defendant Company.

Received copy, July 29, 1911.
(Sgd.) YEAGER & GIBBENS,
Att'ys for Pl't'f.

28 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Moro Province, 14th Judicial District.

Cause No. 275.

PORT BANGA LUMBER CO., Plaintiff,
versus
EXPORT & IMPORT LUMBER CO., Defendant.

Amended Answer. (Answer to Amended Complaint.)

Comes now the defendant company by its attorneys, A. D. Gibbs and Chas. A. McDonough, and answering the amended complaint:

1st. Denies each and every allegation of said amended complaint which is not hereinafter specifically admitted.

2nd. That the only contract entered into between the parties with reference to the cargo of logs—the subject of this action—is the written contract of June 10th, 1910, a copy of which marked Exhibit "1" for identification is attached hereto and made a part of this answer.

3rd. That on or about the 26th day of August, 1910, the plaintiff received and accepted from the defendant company P5,000.00 on account of said contract of June 10, 1910, and has ever since retained and still retains the same; by reason whereof the plaintiff has ratified said contract, has waived any and all objections thereto and is estopped from demanding the rescis-ion thereof.

Counter-Claim.

As a counterclaim against the plaintiff company, the defendant company alleges:

(*a*) That on the 6th day of May, 1910, it entered into a contract with the China Import & Export Lumber Co. of China, whereby it sold and obligated itself to deliver to the latter a cargo of logs within the time and according to the conditions expressed in said contract, a copy of which marked Exhibit "2" for identification is attached hereto and made a part of this counterclaim.

(*b*) That on the 10th day of June, 1910, the defendant company sublet to the plaintiff company said contract with the China Import & Export Lumber Co., by means of the contract of June 10th, 1910, marked Exhibit "1" and attached to this answer and counterclaim.

(*c*) That according to said contracts mentioned in paragraphs (*a*) and (*b*) of this counterclaim, it was the duty of the vendor in each to deliver and stow aboard the steamship which should be furnished by the China Import & Export Lumber Co., a cargo of logs of the dimensions and classes specified in said contracts as expeditiously as the steamer could receive it.

(*d*) That said plaintiff company in attempting to comply with said contract with the defendant company, supplied and delivered on board the s/s "Hellas," furnished by the China Import & Export Lumber Co., a cargo of logs, but failed to comply with said contract in that part thereof obligating it to supply 32 large logs of a diameter of 40 inches, in place of which, the plaintiff company supplied only thirteen logs of that diameter; and in that part thereof in which it obligated itself to supply ten logs as large and long as possible estimated at—one piece of 45 inches in diameter, two of 42 inches, three of 40 inches and four of 38, none of which was supplied, and in that part in which it obligated itself to deliver and stow the cargo as expeditiously as the steamer could receive it, inasmuch as the failure on the part of the plaintiff company to employ competent stevedores or persons capable of loading or stowing the cargo on board the steamer delayed for such a great length

of time the loading and sailing of said steamer that the representative and agent of the China Import & Export Lumber Co. was compelled to employ the crew of said steamship at an expense of $1,100.00 Mexican Dollars in order to terminate the loading of said steamship.

(*e*) That the China Import & Export Lumber Co. due to the terms of the contract made with its patrons in China for the delivery of the logs contracted with the defendant company and the latter due to the terms of the contract which it had made with the China Import & Export Lumber Co. to supply said logs by virtue of which each vendor obligated itself to pay to its respective purchaser any damages resulting from the failure to comply with their respective contracts, were compelled to receive the logs furnished by the plaintiff company notwithstanding the non-fulfillment of the con-
31 tracts, because they were unable to obtain another cargo without such a delay as would have given rise to the payment of damages to the purchasers of an amount equal to the total value of the cargo, and consequently said defendant company received from said plaintiff company, and the China Import & Export Lumber Co. received from the defendant company said cargo supplied by the plaintiff company under protest.

(*f*) That due to the non-compliance with its contract on the part of the plaintiff in the supplying and delivering of said cargo, the China Import & Export Lumber Co. refused to pay to the defendant company the price agreed upon in its said contract and the latter in order to settle its account and compromise the case with the China Import & Export Lumber Co. was forced to deduct and did deduct from the contract price of said cargo the sum of $8,750.00 U. S. Currency; all of which appears in an agreement of compromise, a copy of which marked Exhibit "3" is attached hereto and made a part of this counterclaim. That said China Import & Export Lumber Co. actually suffered damages equal to or in excess of such deduction by reason of the non-fulfillment of said contract by the plaintiff company.

(*g*) That due to the non-fulfillment by the plaintiff of its said contract with the defendant, the latter has suffered damages in the sum of $8,750.00 U. S. Currency equal to P17,500.00 Philippine Currency.

Wherefore, the defendant company prays that judgment be rendered relieving it from all liability on account of the complaint and that judgment be rendered in favor of the defendant on its
32 counterclaim against the plaintiff for the sum of P17,500.00 with costs of suit and for such other and further relief as may be just and equitable.

Manila, P I., July 31st, 1911.

(Signed) A. D. GIBBS,
CHAS. A. McDONOUGH,
Attorneys for the Defendant.

"EXHIBIT 1."

Memorandum of agreement between the Export & Import Lumber Co., (hereinafter described as the buyers) and Port Banga Lumber Co., (hereinafter described as the sellers) for the purchase of a quantity of logs of about 40,000 (forty thousand) cubic feet English measure of Philippine Pagatpat.

The specifications of the timber required is hereto appended and the sellers shall provide logs of the lengths and diameters as therein set forth or larger; that is to say, the lengths and diameters may exceed those specified up to ten per cent (10%); or in the case of the diameters, they may exceed those specified up to twenty per cent (20%).

The logs delivered shall be of good quality in that they shall be free from rot or rotten spots, large loose or rotten knots, shakes or serious defects of a nature to make the timber unfit for use for substantial construction purposes. Therefore, all timber delivered shall be strong, sound, reasonably straight and free from serious defects impairing its strength.

33 It shall be allowable for the sellers to supply not exceeding ten per cent (10%) of the logs with defective hearts, at the butt only. Said defective hearts shall be plugged with neat wooden plugs properly fitted so as not to be unsightly to the eye. Rotten hearts where exposed at the butt end shall not exceed 4" (four inches) in diameter in logs under thirty inches in diameter nor 5" (five inches) in diameter in logs over thirty inches in diameter. The wood immediately surrounding said rotten heart shall be sound and free from dote or other serious defects.

Measurements.—All timber supplied by sellers shall on delivery be measured and the contents thereof shall be ascertained as hereinunder set forth:

The circumference of the round log (excluding bark) shall be taken at the center of the length of the log in English inches; divided by four and the product squared; then multiply this square (of the said quarter of the circumference) by the length of the log in English feet measure and divide by 144; the product shall be the contents in English cubic feet to be paid for by the buyers.

Price.—The buyers shall pay the sellers the sum of forty (40) centavos, Philippine currency, per English cubic foot of timber delivered and stowed free on board at loading port. All export dues, taxes and government or local charges of whatsoever nature at loading port to be borne by the sellers.

Delivery.—The logs shall be delivered free on board and stowed at an open sub-port in the Philippine Islands, which port shall be guaranteed by the sellers to be a safe harbor with a depth
34 of water at low tide sufficient to enable a steamer drawing twenty-six (26) feet to enter and leave without risk.

Sellers agree to have the cargo ready for shipment by the fifteenth

of August. In the event of said cargo not being ready for shipment by September 30, 1910, the sellers shall pay the buyers damages at the rate of three (3) per cent for each and every week of delay commencing with October 1, 1910.

In the event of failure on the part of sellers to deliver within the date specified (September 30, 1910) the said sellers shall pay to the buyers only such damages as the said buyers (Export & Import Lumber Co.) shall suffer at the hands of the China Import & Export Lumber Co., to whom the buyers are under contract to deliver the within mentioned logs prior to October 1, 1910.

So soon as the cargo is ready for shipment the buyers shall be informed thereof by cablegram by the sellers, and the buyers undertake within sixty days to send a steamer to load the timber.

Sellers undertake to load the cargo onto said steamer as quickly as said steamer can take them. Inspection shall be made at the point of shipment by a representative appointed by the buyers, whose acceptance of the timber shall constitute acceptance under this contract, so far as quality is concerned, but the sellers shall deliver the cargo alongside the steamer or steamers chartered to carry same and shall stow said cargo in the holds of said steamer.

35 In witness whereof, we, the undersigned have hereunto set our hands this tenth day of June, 1910.

EXPORT & IMPORT LUMBER CO.,
(Sgd.) By W. W. PAYNE, *President.*
PORT BANGA LUMBER CO.,
(Sgd.) By F. P. WILLIAMSON,
Vice-President.

Witness:
(Sgd.) P. G. STERNE.

Specification of Pagatpat Logs.

Pillars.

Pieces.	Length, ft.	Diameter, small end.
16	19	24"
14	35	30" Or larger.
4	42	33"
34		

Roof Timbers.

34	23	20 Center diameter.
8	19	20 " "
16	28	20 " "
58		

Timbers (to be cut into square beams).

53	23	24 Center diameter.
20	23	35 " "
*15	38	40 " "
*2	45	40 " "
*7	27	40 " "
*8	40	40 " "
105		

*To be as clear as possible.

36 Timber (to be cut up small): Lengths exact or over; sizes approximate only.

Pieces	Length, ft.	Diameter, small end.
2	22	30
16	30	25
3	28	32
7	25	30
12	23	33
8	17	35
24	24	27
9	36	33
6	39	27
2	28	27
14	28	27
103		

About 10 logs as large and as long as possible.

Say	1 Piece	45′
	2 "	42′
	3 "	40′
	4 "	38′

In the event of timbers not being straight they shall be delivered sufficiently large in diameter in excess of the measurements specified so that straight timbers of sizes specified can be cut therefrom.

PORT BANGA LUMBER CO.,
(Sgd.) By F. P. WILLIAMSON, *Vice-President.*
EXPORT & IMPORT LUMBER CO.,
(Sgd.) By W. W. PAYNE, *President.*

Witness:
(Sgd.) P. G. STERNE.

June 10, 1910.

EXHIBIT "2".

Memorandum of Agreement between The China Import & Export Lumber Co. Ltd. (hereinafter described as "the Buyers")
37 and the Export & Import Lumber Co. of Manila, P. I. (hereinafter described as "the Sellers") for the purchase by the said Buyers from the said Sellers of a quantity of Logs of about 40,000 (forty thousand) Cubic Feet English Measure of Philippine Pagatpat Wood from the District of Zamboanga in the Island of Mindanao of a quantity (quality) and color as per sample submitted by the Sellers and sealed by the parties hereto.

The Specifications of Timber required by the Buyers is hereto appended and the Sellers shall provide round logs of the diameters and length as therein set forth or larger.—that is to say, the lengths may exceed those specified up to 10% and the diameters may exceed those specified up to 20%.

The logs delivered shall be of good quality in that they shall be free from rot or rotten spots, large loose or rotten knots, shakes or serious defects of a nature to make timber unfit for use for substantial constructional purposes. Therefore all timber delivered shall be sound, strong, reasonably straight and free from serious defects impairing its strength.

It shall be allowable for the Sellers to supply not exceeding 10% (ten per centum) of the logs with defective hearts at the butt only. Said defective hearts shall be plugged with neat wooden plugs properly fitted so as not to be unsightly to the eye. Rotten hearts where exposed at the butt end shall not exceed 4" in diameter in logs under 30 inches in diameter nor 5" in diameter in logs over 30 inches diameter. The wood immediately surrounding said rotten
38 hearts shall be sound and free from dote or other serious defects.

Measurements. All timber supplied by sellers shall on delivery be measured and the contents thereof in cubic feet English Measure shall be ascertained as hereunder set forth,—

The circumference of the round log (excluding bark) shall be taken at the center of the length of the log in English inches; divided by 4 and the product squared;—then multiply this square (of the said ¼ of the circumference) by the length of the log in English feet measure and divide by 144;—the product shall be the contents in cubic feet to be paid for by the Buyers.

Formula:

$$\frac{(C'' \div 4)^2 \times L'}{144} = \text{Cubic Feet.}$$

Example:
A log in circumference 62.8″ and in length 30′:

62.8″÷4 ..... 15.7
15.7 x 15.7..... 246.5
x 30 .....7395.0
÷144 ..... 51¼
(fifty-one and one-third cubic feet.)

Price. The Buyers shall pay the Sellers the sum of Gold Dollars cents ninety ($.90) per cubic foot of timber delivered and stowed free on board at loading port. All export dues, taxes and Government or local charges at loading port of whatsoever nature to be borne by Sellers.

Payment. The Buyers undertake to establish a credit in
39 favor of the Sellers for G. $45,000, against which the Sellers may draw at four months' sigth at par with interest for account of Buyers on delivery to Bank of shipping documents and certificate of Inspector appointed by Buyers. A reasonable cash advance to G. $10,000 will be granted by Buyers to Sellers as required for the logging operations.

Delivery. The logs shall be delivered free on board and stowed at an open port in the Philippine Island of Mindanao, presumably Port Banga, which port or any other port named by Sellers is guaranteed by Sellers to be a safe harbor with a depth of water sufficient to enable a steamer to comfortably enter and leave port with water draught of 26 feet. The Sellers further guarantee that such port is a port of entry and clearance to which vessels of any nationality can proceed to load for foreign ports.

Sellers agree to have the cargo ready for shipment within about three months. In the event of said cargo not being ready for shipment on or before the 30th of September, 1910, the Sellers shall pay the Buyers damages at the rate of 3% (three per centum) for each and every week of delay commencing from the first day of October, 1910.

Similar damages are payable for late delivery by the Buyers to their clients in China who have purchased this timber and it is understood as between the parties hereto that in the event of damages arising for late delivery, the Sellers shall pay to the Buyers the actual damages which the Buyers may suffer through them up to said three per cent per week on the f. o. b. value. In the
40 event of part of the cargo being delivered the damages shall be payable only on the part of the cargo remaining undelivered, plus any loss in freight which may be suffered by the Buyers through arrangements having to be made for shipment of any small remaining parcel to the port of Tongku, China.

So soon as the cargo is ready for shipment the Buyers shall be informed thereof by cablegram by the Sellers and the Buyers undertake within sixty days to send a steamer or steamers to load the timber, of sufficient capacity, power of winches and gear to handle the cargo. Sellers undertake to load the logs onto said steamer or steamers as quickly as said steamer (s) can take same.

Inspection. Shall be made at the port of shipment by a representative appointed by the Buyers, who shall inspect the cargo on beach and whose acceptance of the timber shall constitute acceptance under this contract, but the Sellers shall deliver the cargo alongside the steamers chartered to carry same and shall stow said cargo in the holds of said steamers free of charge.

In witness whereof, we, the undersigned, have hereunto set our hands this sixth day of May, nineteen hundred and ten.

EXPORT & IMPORT LUMBER CO.,
(S'g'd) By WM. W. PAYNE, *Pres't.*
THE CHINA IMPORT & EXPORT LUMBER CO., LTD.,
(S'g'd) By C. S. SEITZ, *General Manager.*
Witness,
(S'g'd) A. B. ADAMS.

41 (EXHIBIT 2—Continued.)

Pillars—Straight.

Pcs.	Length.	Diameter, Lgth., End.
16	19′	24″)
14	35′	30″) Or larger.
4	42′	33″)
34		

Roof Timbers.

34	23′	20″ Center.
8	19′	20″ "
16	28′	20″ "
58		

Timbers to be Cut Into Square Beams.

53	23′	24″ Diam., center.
20	23′	35″
15	38′	40″ Clear as possible.
2	45′	40″ " " "
7	27′	40″
8	40′	40″ Clear as possible.
105		

Timbers to be Cut up Small.

Lengths Exact or Over Sizes Approximate.

2	22′	30″
16	30′	25″
3	28′	32″
7	25′	30″
12	23′	33″
8	17′	35″
24	24′	27″
9	36′	33″
6	39′	27″
2	28′	27″
14	28′	27″
103		

About 10 logs as large and as long as possible:

Say 1 pce. 45′
2 " 42′
3 " 40′
4 " 38′.

In the event of timbers not being straight they shall be delivered sufficiently large in diameter in excess of the measurements
42 specified so that straight timbers of sizes specified can be cut therefrom.

EXPORT & IMPORT LUMBER CO.,
By WM. W. PAYNE, *Pres't.*
THE CHINA IMPORT & EXPORT LUMBER CO., LTD.,
By C. S. SEITZ, *Gen'l Mgr.*

Witness:
A. B. ADAMS.

EXHIBIT "3."

ZAMBOANGA, 19th November, 1910.

It has this day been mutually agreed between the Export and Import Lumber Company of Manila and the China Import & Export Lumber Co. of Shanghai, China, that in consideration of

1. the improper loading and stowing of the cargo of Pagatpat Logs shipped per s. s. "Hellas" under contract between the parties hereto dated the 6th May 1910 and the delay caused thereby to the vessel of about 16 (sixteen) days and

2. because the said delay in loading has caused the China Import and Export Lumber Co. to become liable for damages payable to the consignees in China of the said cargo and

3. because through the said delay there is grave and imminent

risk that the said cargo cannot be discharged at Tongku before the closing of the said port by ice causing further loss through
43 discharge becoming necessary at some neighboring port and transhipment being made in Spring at Tongku, the penalty or damages for nondelivery at Tongku continuing meantime payable to the ultimate consignees of the cargo,

And furthermore in consideration of the fact that the said contract for Pagatpat logs has not been properly fulfilled in that a certain number of the large pieces of 10' 6" circumference have not been supplied but smaller pieces loaded instead thereof which renders the China Import & Export Lumber Co. liable to their clients in China for damages for nondelivery of the said pieces according to contract and in consideration of the fact that under the contract dated the 6th day of May 1910 entered into between the parties hereto the Export & Import Lumber Co. is liable for such damages as recited it has this day been agreed to compromise and adjust the difficulties which have arisen on an equitable and friendly basis and the Export & Import Lumber Co. of Manila undertakes in consideration of being relieved of all risk of loss claims and damages of any nature whatsoever under the Pagatpat contract of the 6th May 1910 to pay unto the China Import & Export Lumber Co. the sum of G. $8,750.00 (Gold Dollars Eight thousand seven hundred and fifty) as liquidated damages for nonfulfillment of the said contract and the China Import & Export Lumber Co. agrees and undertakes to accept the said sum of G. $8,750. in full settlement of any claims they may have against the said Export & Import Lumber Co. and accepts all risks of loss and damage as being solely
44 for its own account and furthermore undertakes to consider the Pagatpat agreement of the 6th day of May 1910 as having been fulfilled and completed by the Export & Import Lumber Co.

The General Manager of the China Import & Export Lumber Co. further agrees to sign legal documents covering this agreement as above recited to be drawn up by the lawyers of the Export & Import Lumber Co. at Manila in legal phrasing so that the said Export & Import Lumber Co. shall be forever relieved from liability to the China Import & Export Lumber Co. under the said Pagatpat agreement of the 6th May 1910.

It is further agreed that the sum of G. $8,750. payable by the Export and Import Lumber Co. as above recited shall be deducted by them from the invoice value of the Pagatpat shipped on the S. S. "Hellas" against which the China Import & Export Lumber Co. has established a credit in favor of the Export & Import Lumber Company through the Chartered Bank of India, Australia and China.

In witness whereof we, the undersigned, have hereunto set our hands this the 19th day of November 1910.

CHINA IMPORT & EXPORT LUMBER CO., LTD.

(Sgd.) C. S. SEITZ, *General Manager.*

EXPORT & IMPORT LUMBER CO.,

(Sgd.) By W. W. PAYNE, *President.*

45 Notice to plaintiff of February 10, 1911, to take deposition of Wm. L. Ramsay in behalf of the defendant, omitted.

46 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Moro Province, Fourteenth Judicial District.

No. 275.

PORT BANGA LUMBER COMPANY, Plaintiff,
versus
EXPORT & IMPORT LUMBER COMPANY, Defendant.

A deposition of Wm. L. Ramsay, sworn as a witness for the defendant company and given pursuant to notice and affidavit, accompanied by interrogatories attached thereto, in a certain cause pending in the Court of First Instance of the Moro Province, 14th Judicial District, wherein the Port Banga Lumber Company is plaintiff and the Export & Import Lumber Co. is defendant.

Mr. A. D. Gibbs appeared on behalf of the defendant company; there being no appearance for the plaintiff.

The said WM. L. RAMSAY, the witness named in said notice, being on this 1st day of March, 1911, first duly sworn to speak the truth, the whole truth and nothing but the truth, doth depose and say as follows:

Interrogatory 1. State your name, residence and occupation?

A. William Leslie Ramsay, Manila Club, Marcelino, Manila, P. I., Accountant.

Int. 2. What position, if any, do you hold at Manila
47 with the Chartered Bank of India, Australia & China?

A. Accountant, Chartered Bank of India, Australia and China, Manila.

Int. 3. You may state whether or not payment was made through your bank to the Export & Import Lumber Co. of Manila by the China Import & Export Lumber Co. for a cargo of lumber shipped by the former to the latter at Tientsin?

A. Yes, payment was made.

Int. 4. If you answer the preceding interrogatory in the affirmative, how much did your Bank pay to the Export & Import Lumber Co. for the China Import & Export Lumber Co.?

A. P48,768.84 (Forty eight thousand seven hundred sixty eight pesos, and eighty four cents).

Int. 5. How much were you first authorized to pay on account of said cargo?

A. We were authorized to pay up to £8,000, if required, against shipments of timber.

Int. 6. If you paid less than the amount originally authorized, state why you did so?

A. Messrs. Payne and Seitz came into our Bank together and stated that that was the amount agreed upon as the value of the cargo for which we were to make payment.

(Signed) W. L. RAMSAY.

PHILIPPINE ISLANDS,
City of Manila, ss:

I, Emilio Mapa, a Notary Public in and for the said City of Manila, P. I., duly commissioned and sworn, hereby certify that pursuant to said notice, I caused the said Wm. L. Ramsay to appear
48 before me at my office in Manila on the 1st day of March, 1911, at 9:00 o'clock in the forenoon; that he exhibited to me his cedula No. 77201 issued at Manila on the 20 day of January, 1911, and was duly sworn to tell the truth, the whole truth and nothing but the truth and his evidence taken down, and after which the same was carefully read over to the said Wm. L. Ramsay, corrected and signed by him in my presence and took oath before me in due form that the said deposition so subscribed by him contained the truth, the whole truth and nothing but the truth; that I have personally knowledge of the identity of said witness and that he is the person named in said notice and interrogatories annexed, and that I am not of counsel or kin to any of the parties to the cause, or in any manner interested in the action; and that the said deposition was sealed up by me and directed it to the Clerk of the Court of First Instance of the Moro Province, 14th Judicial District, at Zamboanga, Island of Mindanao, Philippine Islands.

Witness my hand and seal of office, this 1st day of March, 1911.

(Signed) EMILIO MAPA,
Notary Public.

My Commission expires Dec. 31, '12.

[Notarial Seal.]

The foregoing instrument was received and recorded at 2 p. m. this 27th day of March, 1911.

I so certify.

(Sgd.) FELIPE FABIAN,
Deputy Clerk of the Court of 1st Instance.

49 Notice, application, etc., dated May 17, 1911, to take deposition of A. B. Adams on behalf of defendant, omitted.

50 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Moro Province, Fourteenth Judicial District.

No. 275.

PORT BANGA LUMBER CO., Plaintiff,
versus
EXPORT & IMPORT LUMBER CO., Defendant.

Deposition of A. B. Adams taken before me the undersigned notary public at Manila, Philippine Islands, the 10th day of June, 1911, in pursuance of the notification dated the 17th day of May, 1911, and duly served upon the plaintiff company and its attorneys.

Mr. A. D. Gibbs appeared on behalf of the defendant company, and Mr. L. T. Gibbens appeared on behalf of the plaintiff company.

The said A. B. ADAMS being by me first duly sworn to tell the truth, the whole truth and nothing but the truth, testified as follows:

Interrogatory 1. State your name, residence and position, if any, with the defendant the Export & Import Lumber Co. of Manila?

—. Alfred B. Adams, of Manila, Assistant Manager.

51 Int. 2. How long have you been the assistant manager of the defendant company?

—. About three years.

Int. 3. Do you know Mr. Payne and if so what position does he occupy in the defendant company?

—. Yes, Mr. Payne is President and Managing Agent of the Export & Import Lumber Co.

Int. 4. State if you know the whereabouts of Mr. Payne during the first half of the year 1910?

—. Mr. Payne was in China from Jan. 11, 1910, until about the middle of April, 1910. He stayed in Manila until May 18th and then left for Zamboanga, returning from Zamboanga to Manila about June 5th.

Int. 5. State whether or not he was accompanied by any person on his return from Zamboanga and if so, by whom?

—. Yes, he was accompanied by Mr. F. P. Williamson, the Vice-President of the Port Banga Lumber Co.

Int. 6. Are you familiar with the facts concerning the contract for the Pagatpat logs in question?

—. Yes.

Int. 7. State, if you know, by whom the first communication on the part of the defendant company was made with the plaintiff company as to the furnishing of the logs covered by that contract?

—. By myself.

Int. 8. When and where and with what representative of the plaintiff company did you make that first communication?

52 —. In Manila on or about February 18th, 1910, with Mr. F. P. Williamson.

Int. 9. Of what did that communication consist?

—. I advised Mr. Williamson of the approximate size of the logs required and asked him if he could supply same.

Int. 10. What reply did he make?

—. After deliberating about an hour, he stated that he could but would require financial assistance in getting them out, which reply I cabled to Mr. Payne in China.

It is stipulated between counsel for plaintiff and defendant that the cable sent by Mr. Adams to Mr. Payne was as follows:

Paynewheel, Shanghai:

Pagatpat—Saubsiepve—From Merchant—Williamson—Febiasidja Assistance. Financially.
(Dated Feb. 18, 1910.)

It is further stipulated that the Code words used in the foregoing message were taken from the A B C Code 5th Edition in connection with the E W O Code and that subject to comparison by counsel for plaintiff, the translation of said message is as follows:

"Pagatpat can deliver endeavor to get a reduction from forty foot length Williamson will leave this evening He will require assistance financially."

The witness further states that he was unable to find the proper word in the A B C Code for the phrase "forty foot" and therefore took the word "Merchant" from the Southard Code, which
53 means "forty foot."

Int. 11. State whether or not as assistant manager of the defendant company you had knowledge of the making of the contract of June 10th, 1910, between the plaintiff and defendant?

—. Yes.

Int. 12. State, if you know, whether or not the price of forty centavos per cubic foot stipulated in the contract of June 10, 1910, was agreed upon previous to or on the date of the execution of that contract?

—. Previous to.

Int. 13. State whether or not previous to the signing of that contract you received any communication from the plaintiff company with reference to the terms upon which they would supply the cargo in question?

—. Yes. We received their letter dated April 29, 1910, which incorporates a copy of a cable previously sent by us to the plaintiff company and their reply thereto.

Int. 14. Please state whether or not the letter marked for identification Exhibit 1 to Deposition of Adams is the original of the letter you referred to in your last answer?

—. It is.

Int. 15. Where was the contract of June 10, 1910, signed?

—. In the office of the Export & Import Lumber Co.

Int. 16. Do you know the present whereabouts of Mr. P. G. Sterne who appears to have witnessed the signatures of Messrs. Williamson and Payne to that contract?

54 —. In Philadelphia.

Int. 17. When did he cease working for your company?

—. About October, 1910.

Int. 18. State whether or not you were present during the negotiations and conversations had between Messrs. Payne and Williamson in Manila incident and leading up to the signing of the contract of June 10, 1910?

—. Part of the time.

Int. 19. State whether or not anything was said in your presence on the subject of supplying and selling the logs on joint account?

—. No.

Int. 20. State whether or not Mr. Payne stated to Mr. Williamson at any of the conversations or negotiations had in your presence that he had made a contract with the China Import & Export Lumber Co. for the sale of the logs at fifty-five centavos per cubic foot?

—. No.

Int. 21. How much was the defendant company paid by the China Import & Export Lumber Co. for the cargo furnished by the plaintiff and through what Bank, if any, was it paid?

—. P40,157.73 through the Chartered Bank of India, Australia & China.

Int. 22. Was that less than the contract price, and if so, why did the defendant company accept it?

—. Yes, it was less for the reason that the delivery did not come up to the requirements of the contract.

55 Int. 23. State whether or not the defendant company delivered to the China Import & Export Lumber Co. any other cargo than that supplied by the plaintiff company and if so, what was it, at what point was it loaded and aboard what steamer?

—. Yes, 256,824 feet of Lauan loaded at Cotabatto on the s/s "Hellas."

Int. 24. What was the total amount paid to the defendant company by the China Import & Export Lumber Co. for the entire cargo carried by the steamer "Hellas" and what part, if any, of that sum was paid for the cargo from Cotabatto?

—. The entire cargo amounted to P48,768.84 of which P8,611.08 was for the Lauan from Cotabatto.

Int. 25. Did the plaintiff company have anything to do with the supplying the Lauan taken at Cotabatto?

—. No.

Int. 26. State approximately how long you had been dealing with the plaintiff company previous to the signing of the contract of June 10th?

—. From about July, 1909.

Int. 27. During that period state approximately the amount of lumber and material your company had purchased from the plaintiff company?

—. P100,000.00 approximately.

Int. 28. State whether you received any shipments of lumber from the plaintiff company after the signing of that contract, exclusive of the cargo in question?

56 —. Yes. We received a shipment in August and one in September of 1910.

Int. 29. State whether or not any of the lumber supplied by the plaintiff company, either before or after the signing of the contract in question was handled on joint account between the plaintiff and defendant?

—. No.

Int. 30. State whether or not previous to the signing of that contract you had purchased any Pagatpat lumber from the plaintiff company, and if so, when, what amount and at what price?

—. Yes, we purchased 21,189 board feet on November 19th, 1909, at P55.00 per thousand feet f. o. b. Zamboanga.

Int. 31. I call your attention to bill dated November 19th, 1909, marked for identification "Exhibit 2 to Deposition of Adams" and freight bill dated November 24, 1909, marked "Exhibit 3 to Deposition of Adams" and ask you to state what those documents are and whether the shipment of Pagatpat lumber mentioned in Exhibit 2 is the lumber referred to in your previous answer?

—. It is. The documents are the original invoice for 21,189 ft. of Pagatpat and other lumber and the freight bill for same.

Int. 32. You may state what that pencil notation (55) above the amount P70 signifies and by whom it was made?

—. The correction from 70 to 55 was made by Mr. Payne

57 as being the price agreed on between him and Mr. Williamson for the Pagatpat in question, which is verified by the credit memorandum over Mr. Williamson's signature on December 23rd by which we were allowed a credit of P15.00 per thousand board feet, thus reducing the price from 70 to 55 as was originally agreed on.

Int. 33. I call your attention to an account marked Defendant's Exhibit 4 to Adams' Deposition, for identification, and signed by F. P. Williamson for the Port Bange Lumber Co. and ask you to state if that is the memorandum of reduction on the Pagatpat lumber referred to in your previous answer?

—. Yes, it is.

Int. 34. How long have you been in the lumber business in the Philippine Islands?

—. Three years.

Int. 35. Are you familiar with the market price of lumber in Manila and other parts of the Philippine Islands?

—. Yes.

Int. 36. Has there been enough of Pagatpat or other class of timber sold in Manila in the original unsawn logs to fix a market price for it in that form?

—. Of Pagatpat, no.

Int. 37. In what form is it usually sold and delivered in Manila?

—. In planks and timbers, squared.

Int. 38. During the forepart of the year 1910 and up to
58 and including the date of signing the contract in question, state if you know what was the market price for sawn Pagatpat lumber or squared timber?

—. P70.00.

Int. 39. Taking this shipment referred to in Exhibits 2 and 4 to your deposition, where was that delivered f. o. b.?

—. Port Banga.

Int. 40. What was the expense of delivering that shipment to you at Manila from Port Banga?

—. P15.00 a thousand *freight.*

Int. 41. I believe you have already stated that Exhibit 3 to your deposition is the freight bill for the shipment of lumber including the 21,189 feet of Pagatpat mentioned in Exhibit 2?

—. Yes, it is.

Int. 42. Are you familiar with the cost of sawing lumber?

—. Yes.

Int. 43. What would be the reasonable cost of sawing a thousand boar*t* feet of Pagatpat lumber?

—. About five pesos a thousand.

Int. 44. Assuming that the saw mill of the plaintiff company is some twenty miles from the cuttings where the Pagatpat timber is secured what would be the cost approximately of transporting it from the beach near the cutting to the saw mill per cubic foot?

—. Not less than five cents per cubic foot.

Int. 45. Have you a saw mill in connection with your plant here in Manila?

59 —. Yes.

Int. 46. After making deductions for the waste occasioned by defects consisting of rotten hearts, wind-shakes and other defects as well as by the sawing itself, how many board feet on an average is produced by one cubic foot in a round log?

—. Of the wood similar to Pagatpat we get from five to seven and a half board feet for each cubic foot.

Int. 47. And deducting the loss occasioned by sawing, the cost of sawing and the cost of transportation from the beach to the mill, what was the price received by the plaintiff company per cubic foot in the unsawn logs for this shipment of 21,189 board feet mentioned in Exhibits 2 and 4 to your deposition?

—. Allowing the extraordinary amount of seven board feet per cubic foot and allowing P5.00 per thousand cost of sawing and five cents per cubic foot transportation from beach to the mill, results in thirty cents per cubic foot, being the price of the round log on the beach.

Mr. GIBBS: That is all.

Cross-interrogatories by Mr. GIBBENS:

Q. Did you receive a reply to your cablegram of Feb. 18 to Mr. Payne in Shanghai?

A. Yes.

Q. Did Mr. Payne grant a reduction from 40 foot length?

A. I understand that there were concessions made but I am not positive. However, Mr. Williamson did not require the
60 reduction of the 44 length, but he stated that shorter lengths would be more convenient to handle.

Q. What did Mr. Payne say relative to rendering the plaintiff company financial assistance?

A. He stated that he was willing to do so within reason.

Q. Did the defendant company render financial assistance to the plaintiff company in the fulfillment of the contract in question?

A. Yes, it did.

Q. By advancing money?

A. Yes, sir.

Q. How much money was advanced?

A. I don't recollect the exact amount at present, but it was several thousand pesos.

Q. Is it not a fact that before the contract in question was entered into that the plaintiff company had a credit with the defendant company of some twenty-four thousand pesos for lumber sold and delivered?

A. More or less that amount is correct, less allowances for bad stock, poorly sawn stock, all of which Mr. Williamson was to make us allowances on as well as on prices. Mr. Williamson had agreed with me to come in to our office and straighten up our many demands for short shipments, bad lumber, poorly sawn lumber and prices, which he has never done, as otherwise we were willing to settle his account in full at any time.

61 Q. The price 40 centavos per cubic foot stipulated in the contract of June 10, 1910, was agreed upon on the date of the execution of that contract, was it not?

A. The final conclusion was reached upon the signing of the contract which occurred on June 10th.

Q. As a matter of fact the price of 40 centavos was agreed to previous to the signing of the contract but on the date of the signing of the contract, was it not?

A. It was agreed to on the date of the execution of the contract; that was necessarily the case so far as my knowledge.

Q. Referring to Exhibit 1 to your deposition, a reference therein is made to logs not less than 16 inches in diameter and from 12 to 24 feet long and has no reference to the timber which is the subject-matter of the contract?

A. This was a general offer of 40 cents per cubic foot and could also apply to the contract order after Mr. Williamson had been presented with the other specifications of the contract.

Q. The special order referred to in Exhibit 1 to your deposition refers to the order which was made subject to the contract of June 10, 1910, does it not?

A. I am not positive that it was, for the reason that I do not understand to what he refers as the special order, being that we had no such order on hand.

62 Q. Is it not a fact that the defendant company had the China Import & Export Lumber Co.'s order for the large timbers at that time?

A. No.

Q. Mr. Payne was in China negotiating for this order at that time was he not?

A. Yes, sir.

Q. To what do you refer in your telegram quoted in Exhibit 1 to your deposition when you state "send without fail by tonight's post, firm offer thirty days covering Pagatpat logs for China" and the remainder of the telegram?

A. That was to get the firm offer on the Pagatpat.

Q. Mr. Payne was in China at that time was he not?

A. No, Mr. Payne came to Manila about April 11th.

Q. Then Mr. Payne was in Manila on April 27th and 28th when the cable referred to herein was sent?

A. He was.

Q. What business was still open?

A. As I did not send the message personally, I do not know.

Q. The business referred to as being still open refers to the special order of the China Import & Export Lumber Co., does it not?

A. I do not know, it might refer to several orders that were pending with the Port Banga Lumber Co.

Q. For what purpose was the Shanghai representative expected to arrive May 3rd?

A. For the purpose of investigating conditions regarding Pagatpat.

63 Q. The Shanghai representative referred to in Exhibit 1 to your deposition was the representative of the China Import & Export Lumber Co. was he not?

A. Yes.

Q. Is that Mr. Seitz?

A. Yes, sir.

Q. Mr. Seitz came to Manila to secure some extra large logs in order to fill a contract in China, did he not?

A. Mr. Seitz came to Manila to secure some Pagatpat logs from Mr. Payne, he understanding that the growth of Pagatpat was such as would allow him to fill his order. A part of the order was for some large logs but the bulk of the order was for logs that were easily obtainable.

Q. The China Import & Export Lumber Co. through its representative Mr. Seitz gave this order to the defendant company, did it not?

A. Yes, sir.

Q. Was this the first order for logs or lumber that the defendant company had received from the China Import & Export Lumber Co.?

A. It was the first order to be filled from the Philippine Islands.

Q. The defendant company filled the order and made the shipment, did it not?

A. We partially filled the order.

Q. Has the defendant company made any subsequent shipments of logs or lumber to the China Import & Export Lumber
64 Co.?

A. No.

Q. Did you ever hear or do you know anything about the defendant company and the plaintiff company doing any business of buying and selling logs on joint account other than that mentioned in Exhibit 1 to your deposition

A. No.

Q. Have you any other correspondence relative to the defendant and plaintiff's company doing business on joint account?

A. No, sir.

Q. At any time prior to the execution of the contract in question was there anything said in your presence on the subject of supplying and selling logs on joint account of the defendant and plaintiff companies?

A. No, sir.

Q. I believe you stated that you were present only part of the time during the negotiations and conversations had between Messrs. Payne and Williamson in Manila incident and leading up to the execution of the contract of June 10, 1910?

A. Yes, sir.

Q. The China Import & Export Lumber Co. paid the defendant company 90 cents gold per cubic foot for the Pagatpat logs supplied by the plaintiff company did it not?

A. They paid 90 cents gold per cubic foot less $8,750.00 dollars U. S. currency deducted from the value of the shipment
65 on account of failure to comply with their contract.

Q. In what respect did the defendant company fail in fulfilling the terms of its contract with the China Import & Export Lumber Co.?

A. As far as I know from the failure to deliver the required number of logs, the proper sizes and for not conforming to time of delivery expressed in the contract and from failure of the plaintiff company to provide sufficient men for stowage purposes.

Q. As a matter of fact the delay in loading and stowing the Pagatpat logs was due to the fact that the hatches of the s/s "Hellas" were too small to receive the large logs?

A. That I do not know.

Q. Have you ever seen the Port Banga mill and the facilities for loading lumber at that mill?

A. No, sir.

Mr. GIBBENS: That is all.

Redirect examination by Mr. GIBBS:

Q. I call your attention to a certificate of the payment of Forestry dues marked for identification Exhibit 5 to the deposition of Adams, and ask you to state from whom and how you received that certificate?

A. This certificate accompanied a bill drawn by the Port Banga

Lumber Co. for various native lumbers that we purchased from them and designates the different woods in their proper
66 groups as recognized by the Bureau of Forestry.

Q. State whether the Pagatpat mentioned in that certificate under the classification of fourth group covers the shipment of Pagatpat mentioned in Exhibits 2 and 4 to your deposition?

A. Not to this particular shipment.

Q. Then you purchased other Pagatpat lumber from the plaintiff company in addition to that mentioned in Exhibits 2 and 4?

A. The Pagatpat included in that item was a sample shipment of two Pagatpat ties and for which no charge was made.

Mr. GIBBS: That is all.

(Signed) A. B. ADAMS.
"
A. D. GIBBS,
Attorney for Defendant.

(Signed) YEAGER & GIBBENS,
By L. T. GIBBENS,
Attorneys for Plaintiff.

PHILIPPINE ISLANDS,
City of Manila, ss:

I, Emilio Mapa, a Notary Public in and for the said City of Manila, P. I., duly commissioned and sworn, hereby certify that pursuant to said notice, I caused the said A. B. Adams to appear before me at my office in Manila on the 10th day of June, 1911, at 9:00 o'clock in the forenoon; that he exhibited to me his ce-
67 dula No. F-49393 issued at Manila on the 25 day of April, 1911, and was duly sworn to tell the truth, the whole truth and nothing but the truth and his evidence taken down, and after which the same was carefuly read over to the said A. B. Adams, corrected and signed by him in my presence and took oath before me in due form that the said deposition so subscribed by him contained the truth, the whole truth and nothing but the truth; that I have personal knowledge of the identity of said witness and that he is the person named in said notice, and that I am not of counsel or kin to any of the parties to the cause, or in any manner interested in the action; and that the said deposition was sealed up by me and directed *it* to the Clerk of the Court of First Instance of the Moro Province, 14th Judicial District, at Zamboanga, Island of Mindanao, Philippine Islands.

Witness my hand and seal of office, this 12 day of June, 1911.

(Signed) EMILIO MAPA,
Notary Public.

My commission expires Dec. 31, '12.
No. 40; Fol. 13.

[NOTARIAL SEAL.]
[NOTARIAL SEAL.]

68 EXHIBIT 1 TO DEPOSITION OF ADAMS.

F. W. REDDING,
President.

F. P. WILLIAMSON,
Vice-President and Secretary.

Port Banga Lumber Co. (Incorporated).

Cable Address "Banga"
A 1 Code.

ZAMBOANGA, P. I., April 29", 1910. 190—.

Export & Import Lumber Co., Manila.

DEAR SIRS: We received from you yesterday the following cable:

"MANILA, April 27"-28"

Banga, Zamboanga:

Scorzale firm offer thirty days covering pagatpat logs for China. Ochosen recibiras bankers Shanghai recetado afrigire malsesudo beizeichen.

(Sig.) CAHOY."

Meaning:

Send without fail by tonight's post firm offer thirty days covering pagatpat logs for China. Cannot get on without firm offer. Will be required for bankers. Shanghai representative is expected to arrive 3" day of May. The business referred to is still open.

It is not clear to us if this relates to pagatpat logs in general or to the special order for which you remained some time in
69 China. For these logs in a general way we do not hesitate to quote you a firm offer to stand 30 days for .40¢ per cubic foot, logs to run not less than 16" in diameter and from 12' to 24 feet long. In regard to the special order we are not familiar with the conditions nor have we the dimensions to hand, besides we thought that we are arranging the price and details and that the business was to be done on joint account.

We sent you the following cable:

Cahoy, Manila:

Uebereilen. We do not quite understand your telegram. We thought you were arranging conditions and price, which are not familiar to us. No mail by the time you mention.

Very truly,

PORT BANGA LUMBER CO. (INC.)

(Sgd.) By F. P. WILLIAMSON, *Vice-President.*

EXHIBIT 2 TO DEPOSITION OF ADAMS.

ZAMBOANGA, MINDANAO, P. I.,
November 19th, 1909. 190.

M The Export & Import Lumber Co., Manila, P. I. to Port Banga Lumber Co. (Incorporated), Dr.

S/S "Romulus".

125 pcs. of Yacal 10,938 B. ft. at P100.00 p. M. f. o. b. P1093.80
26 " "Molave 2,605 " " " "142 00 " M. f. o. b. " 357.91
(55)
695 " "Pagatpat 21,189 B. ft. at P70.00 p. M. f. o. b. "1483.23

Total P2944.94

(continued on next page)

70

e. e.
PORT BANGA LUMBER CO. (INC.),
(Sgd.) By F. W. REDDING, *President.*

Fght. 520.97.

NOTE.—The figures put in above exhibit in ink are in pencil in original exhibits. Written in ink on this copy to avoid blurring from handling.)

EXHIBIT 3 TO DEPOSITION OF ADAMS.

No. 1791. MANILA, 24th. November, 1909.

The Export & Import Lumber Co. to Compañia Maritima, Dr.

Shipping Office.

	Pesos	Cents
To freight from Zamboanga to Manila per S. S. "Romulus" Voy. No. C 39 Inw. as per Bill of Lading No. —		
846 Pieces Lumber 25732 Brt. at P 15.00 per M Bft.	P520.97	

E. & O. E.
Received Payment.

COMPAÑIA MARITIMA,
(Sgd.) JULIO GOYENA,
Accountant.

(Stamp 4¢.

71 DEF'T'S EXHIBIT 4 TO ADAMS' DEPOSITION.

Statement.

Export & Import Lumber Comp., Manila, P. I.

Aug.	3rd	To Sales a/c shipment	"Neil Macleod"...	P	6,843.55
Sept.	6th	" " "	"Brutus".....	"	125.24
Oct.	18th	" " "	" " ".....	"	1,202.53
Nov.	19th	" " "	"Romulus".....	"	2,944.94
Dec.	8th	" " "	"Neil Macleod"...	"	2,885.88
"	20th	" " "	"Romulus".....	"	4,908.72
"	21st	" " "	" " ".....	"	2,436.30
					P21,347.16

Nov.	24th	By Internat'l Bank. Corp.....	P	2,500.00
Dec.	20th	" " " "	"	1,000.00
"	23rd	" Sales a/c reduction on Pagatpat.....	"	317.83
Jan.	10th	" Internat'l Bank. Corp.....	"	3,000.00
Feb.	28th	" Sales a/c reduction on Yacal shipped Aug. 3rd, 1909.....	"	630.24
"	28th	" Balance	"	13,899.09
				P21,347.16

PORT BANGA LUMBER CO. (INC.),
(S'g'd) By F. P. WILLIAMSON, *Vice-President.*

72 EXHIBIT 5 TO DEPOSITION OF ADAMS.

Invoice No. 1616.

(Refer to Bureau of Internal Revenue Circular No. 287.)
We hereby certify that all taxes have been paid at the Treasurer's Office, Zamboanga, on 156,683 B. F. sawn lumber, shipped on S. S. Brutus today, consigned to Export & Import Lumber Co. whose address is Manila.

REDDING & WILLIAMSON.

First Group.		
Yacal & Lanete	98	12,707
Second Group.		
Guijo	316	23,926
Third Group.		
.....		
Fourth Group.		
Pagatpat & Lumbayao.....	10,393	120,050

Zamboanga, P. I., April 1st, 1910.

PHILIPPINE ISLANDS,
City of Manila, ss:

I hereby certify that the foregoing is a true and correct copy of the original documents exhibited to me with which I have compared it.

In witness whereof, I have hereunto set my hand and affixed my seal of office, this 12 day of June, 1911.

(S'g'd) EMILIO MAPA,
[NOTARIAL SEAL.] *Notary Public.*

My Commission expires Dec. 31, '12.

No. 40, Fol. 13.

73 Notification to plaintiff of application for commission to take deposition of C. L. Seitz, at Shanghai, on behalf of defendant, dated February 10, 1911; application for such commission of same date; and order of Court of February 22, 1911, granting same, omitted.

74 UNITED STATES OF AMERICA,
Philippine Islands:

Court of First Instance of the Moro Province, 14th Judicial District.

Civil Case No. 275.

PORT BANGA LUMBER CO., Plaintiff,
versus
EXPORT & IMPORT LUMBER CO., Defendant.

UNITED STATES OF AMERICA,
Philippine Islands, Moro Province, Zamboanga, ss:

To the Consul General of the United States of America or to any Commissioner Authorized by the Laws of the United States to Administer Oaths and Write Depositions at Shanghai, China, Greeting:

Know ye, that we, in confidence of your prudence and fidelity, have appointed you Commissioner, and by these presents do give unto you full power and authority to examine under oath, before you to be taken, C. L. Seitz, in Shanghai, China, as a witness in a certain cause now pending in the Court of First Instance of the Moro Province, 14th Judicial District, Philippine Islands, wherein the Port Banga Lumber Company is plaintiff and the Export & Import Lumber Company is defendant, on the interrogatories
75 and cross-interrogatories hereto annexed. And I do hereby require you, before whom such testimony may be taken to reduce the same to writing and to close it up under your hand and seal, directed to the Clerk of the Court of First Instance of the

Moro Province, 14th Judicial District, at Zamboanga, Island of Mindanao, Philippine Islands, and that you return the same when executed as above directed annexed to this writ, with the title of the cause endorsed on the envelope of the commission, unto the Court of First Instance with all convenient speed.

Witness the Honorable Chas. A. Low, Judge of the Court of First Instance of the Moro Province, 14th Judicial District, at Zamboango, Island of Mindanao, Philippine Islands, this 22d day of February, 1911.

(Signed) CHAS. A. LOW,
Judge of the Court of First Instance of the Moro Province, P. I.

Attest:

(S'g'd) JOSÉ ESQUIAGA,
Clerk of the Court.

[Seal of Court of First Instance, Zamboanga.]

76 *Interrogatories to be Propounded to C. L. Seitz. Before United States Consul General at Shanghai, China.*

1. What is your name, age and residence?
2. What position do you hold with the China Import & Export Lumber Co.?
3. Do you know the Export & Import Lumber Co. of Manila and the Port Banga Lumber Co. of Zamboanga, P. I.?
4. In a deposition given by you on the 21st of November, 1910, at Zamboanga, P. I., before Herbert D. Gale, Judge of the Court of First Instance, is it a fact that you testified to having executed a contract on the 6th of May, 1910, as representative of the Import & Export Lumber Co. of China with the Export & Import Lumber Co. of Manila, and that you then and there produced and identified said contract, a copy having been attached to your said deposition?
5. Do you know whether or not the Export & Import Lumber Co. of Manila subcontracted their contract with your company, and if so, to whom?
6. Where and in what ship did you receive delivery of the cargo of logs under your contract with the Export & Import Lumber Co. of Manila?
7. On what date did the s. s. "Hellas" anchor at the subport of Buluan Island?
8. Did the Port Banga Lumber Co. have the complete cargo of Pagatpat logs on the beach ready for shipment at the time
77 the s. s. "Hellas" arrived there?
9. If you answer the preceding question in the negative, what part of the cargo as specified in your contract had not yet been delivered on the beach?
10. You may state whether the entire cargo as specified in your contract was delivered aboard the s. s. "Hellas"?
11. If you answer the preceding question in the negative please

state fully in what respects the cargo delivered differed from that specified in your contract?

12. What length of time was consumed in loading and stowing the cargo?

13. State if you know what would have been a reasonable period of time in which to properly load and stow the cargo delivered with competent supervision labour and stevedoring?

14. If you have stated that the Port Banga Lumber Co. consumed an unreasonable length of time in loading and stowing the cargo, please state fully the causes of such delay?

15. State whether the cargo was properly stowed in the ship or not?

16. If you answer the preceding question in the negative, please give details.

17. You may state whether or not you took your ship to the mouth of the Cottabato River after you had begun receiving cargo and before complete delivery thereof, and if so, state fully for what reasons?

18. Did you take a cargo of lumber also from Cottabato?

19. Did you take the entire cargo contracted for at Cottabato? If not, why not?

78 20. For what purpose was the cargo of Pagatpat logs contracted for with the defendant company destined and how, when and where was your company required to deliver it?

21. State whether or not your company was damaged by reason of delay in delivering the cargo and in improperly stowing it and if so, state fully how and of what the damage consisted and the amount of each item of such damage.

22. If the cargo was not in accordance with your contract with the Export & Import Lumber Co., why did you take it?

23. If you had not taken the cargo furnished you by the Port Banga Lumber Co. on account of your contract with the Export & Import Lumber Co. of Manila could you have secured a similar cargo from any other source in time to have complied with your contract with clients in China?

24. If you have answered that you have suffered damages on account of the non-fulfillment of your contract with the Export & Import Lumber Co., please state whether your damages would have been greater or less had you refused to take the cargo furnished by the Port Banga Lumber Co.? State fully the facts and reasons upon which you base your answer?

25. State whether or not the representative or representatives of the Port Banga Lumber Co. said anything to you about the fulfillment or repudiation of your contract with the Export & Import Lumber Co. or about dealing directly with them instead of with the defendant company?

26. If you answer the preceding question in the affirmative, please give the name of such representative or representatives and relate all that was said between you, where the conversation took

79 place and who was present.

27. Did you pay the Export & Import Lumber Co. the

full amount of the agreed price for the cargo of Pagatpat logs provided for in your contract with it?

28. If you answer the preceding interrogatory in the negative, please state what deduction was made and how and under what circumstances it was made?

29. If you have answered that the deduction was made in accordance with a written agreement or agreements of compromise between your company and the Export & Import Lumber Co. of Manila, please exhibit your originals or duplicates of such agreements to the official for identification permitting him to make and attach certified copies thereof to your deposition?

30. State whether or not the damage suffered by your company on account of the non-fulfillment by the Export & Import Lumber Co. of Manila of its said contract was as much or more or less than the amount agreed upon between you and Mr. Payne in representation of your respective companies as liquidated damages?

31. Through what Bank in Manila, if any, did your company make payment to the defendant company for the cargo in question?

(Signed) A. D. GIBBS,
Attorney for Defendant Company.

The foregoing writing was received and recorded at 10 a. m. this 11th day of April, 1911.

I so certify.

(S'g'd) FELIPE FABIAN,
Deputy Clerk of the Court of First Instance.

80 *Cross-Interrogatories to C. L. Seitz, Same to Be Propounded Before the United States Consul General, Shanghai, China.*

1. If you have answered in response to interrogatory No. 4 of your direct examination that you did not produce and identify the contract in question why then did you so testify under oath and why did you sign your name to the deposition so taken?

2. Kindly answer interrogatory No. 5 by testifying only as to facts within your own knowledge and not hearsay and not as to facts or statements made to you by W. W. Payne when the officers and agents of the plaintiff company were not present.

3. Did you receive the delivery of the cargo of logs in question from the Export & Import Lumber Co., defendant herein, or from the Port Banga Lumber Co., plaintiff herein?

4. State whether or not you at any time had a written contract in your own name or as representative of the China Import & Export Lumber Co., Ltd., with the plaintiff herein, the Port Banga Lumber Co.?

5. If you answer the foregoing in the affirmative, kindly attach hereto copy of said contract or copy of letters or correspondence of whatsoever kind touching said contract.

6. If you state that you did not pay the Export & Import Lum-

ber Co. the full contract price for the Pagatpat logs provided
81 for in your contract, state whether or not the Port Banga Lumber Co., plaintiff herein, was a party to, agreed to, or signed the agreement for the reduction of price mentioned in defendant's answer.

7. If you have an agreement or contract with the Export & Import Lumber Co., with regard to said reduction of the contract price for the said pagatpat logs, kindly attach the original hereto.

(Signed) YEAGER & GIBBENS,
Attorneys for Plaintiff Company.

Approved:
(Signed) CHAS. A. LOW, *Judge.*

82 Civil No. 275.

PORT BANGA LUMBER COMPANY, Plaintiffs,
vs.
EXPORT & IMPORT LUMBER COMPANY, Defendants.

A deposition of C. L. Seitz, sworn as a witness for the defendant company and given under and by virtue of a commission issued out of the Court of First Instance of the Moro Province, 14th Judicial District, at Zamboanga, Island of Mindanao, Philippine Islands, accompanied by interrogatories and cross-interrogatories attached thereto, in a certain cause pending in said court, wherein The Port Banga Lumber Company is plaintiff and the Export & Import Lumber Company is defendant. The said C. L. Seitz, the witness named in said commission, being on this 16th day of March, 1911, first duly sworn to speak the truth, the whole truth and nothing but the truth, doth depose and say as follows:

The foregoing writing was received and recorded at 10 a. m. this 11th of April, 1911. Certified by me.

(Signed) FELIPPE FABIAN,
Deputy Clerk of the Court of First Instance.
(Signed) AMOS P. WILDER,
Consul-General of U. S. of A. Commissioner.
[CONSULAR SEAL.]

83 1. In reply to question No. 1 deponent says: Carl Ludwig Seizt, age thirty-one, residence Shanghai, China.

2. In reply to question No. 2 deponent says: I am the General Manager.

3. In reply to question No. 3 deponent says: I do.

4. In reply to question No. 4 deponent says: That is true.

5. In reply to question No. 5 deponent says: They sub-contracted the contract with the China Export & Import Lumber Company with the Port Banga Lumber Company.

6. In reply to question No. 6 deponent says: I received the delivery of the cargo at the sub-port of Buluan and the cargo was loaded on the S. S. "Hellas."

7. In reply to question No. 7 deponent says: The S. S. "Hellas" arrived at Buluan on the morning of the 14th of October, 1910, at about 9 A. M.

8. In reply to question No. 8 deponent says: No, they did not have the completed cargo ready

9. In reply to question No. 9 deponent says: About 40 to 45 logs of large circumference had not been delivered on the beach at Buluan.

10. In reply to question No. 10 deponent says: So far as pieces were concerned there were the requisite number of pieces delivered on board the S. S. "Hellas"; but in the sizes a certain number of logs fell short in circumference, being very much smaller than the sizes called for in the contract.

11. In reply to question No. 11 deponent says: I can get that by referring to the specifications of the cargo. (Witness referred to the press copy of the specifications). Of 15 pieces which
84 should have measured 38 feet long or over by 10 feet, 3 inches in circumference, 6 pieces were delivered of smaller size, ranging from 9 feet in circumference to 10 feet, 2 inches. Also of two pieces 45 feet long or over and 10 feet, 6 inches in circumference, one piece delivered measured only 9 feet, 8 inches in circumference. Further out of 7 pieces which should have measured 27 feet long by 10 feet, 6 inches in circumference, 6 of the pieces delivered were smaller, ranging from 9 feet to 9 feet, 11 inches in circumference. Out of 8 pieces 40 feet long by 10 feet, 6 inches in circumference, 3 pieces delivered measured only 9 feet, 5 inches to 9 feet 9 inches in circumference. These are the most important logs in the cargo which were not delivered according to the contract. In respect of certain other logs delivered and which were not quite up to size, there was no claim against the Export & Import Lumber Company of Manila, because they had been given to understand by me that certain of the dimensions might vary slightly from the specifications contracted for.

12. In reply to question No. 12 deponent says: I have made notes from the Log of the vessel and find that 26 days were consumed in loading the cargo at Buluan Islands, and 2 or 3 days were used in re-stowing the logs in No. 2 hold, while the ship was loading planks and sawn lumber at Cotabata.

13. In reply to question No. 13 deponent says: With reasonably good stevedores, the cargo should have been loaded and stowed in not more than 14 days.

14. In reply to question No. 14 deponent says: The cause of the delay in the loading and stowing of the cargo arose through
85 the Port Banga Lumber Company not having provided competent Stevedores to handle the logs. They had a crew of workmen who were apparently wholly incompetent in handling cargo in a ship, and only had one American, an ex-soldier called "Windy", who had some idea of how to handle such logs as had to be loaded on the ship. The Port Banga Lumber Company was also not in possession of the necessary tackle which Stevedores would usually employ in handling heavy logs. Owing to the incompe-

tency of the loading crew, it was necessary to get the assistance of the officers of the ship to supervise the loading and also to take men from the ship's crew to man the winches.

15. In reply to question No. 15 deponent says: The work done by the man called "Windy" on No. 3 hatch was passably good. In No. 4 hatch the loading was fair. In No. 1 and 2 hatches, which were most important, the loading and stowing of the cargo was very bad indeed. The chief officer of the steamer tried to do his best to help matters along; but nevertheless, through the incompetence of the men employed in the work, the stowing of the logs was extremely bad and they had to be re-stowed again in No. 2 Hold at Cotabata, so as to allow more logs of large size to be put into the hold. On the return of the steamer from Cotabata to Buluan harbor, the chief officer took full charge and control of the loading and the logs for the final completion were well loaded.

16. In reply to question No. 16 deponent says: I have given details in my answer to the preceding question.

86 17. In reply to question No. 17 deponent says: I had made arrangements to purchase a quantity of lumber at Cotabata to be shipped on the S. S. "Hellas" after she would have completed her loading at Buluan. On finding, however, that the stowage of the logs in No. 2 hold was so bad that we could not get any further large logs in, and furthermore, in view of there being only a few logs left on the beach at Buluan without any prospect of receiving more logs in possibly a week, I decided to send the steamer to Cotabata to pick up some of the cargo there and at the same time to enable the logs in No. 2 hold to be re-stowed.

18. In reply to question No. 18 deponent says: I did.

19. In reply to question No. 19 deponent says: I did not take the whole cargo contracted for at Cotabata because we had to work room in the ship to load more logs at Buluan, and in consequence the steamer could only load at Cotabata lumber which could be so stowed that it would not afterwards interfere with the loading of the logs which still had to be taken in at Buluan. This refers especially to No. 1 and 2 holds, in which very little of the Cotabata planks were stowed. In No. 3 and 4 holds the steamer took practically as much as she could carry.

20. In reply to question No. 20 deponent says: The cargo of pagatpat logs was purchased for supplying certain Chinese at Peking, who required the same for the construction of the mausoleum of the deceased Emperor Kwang Hsu. We were required to deliver the lumber at Tongku on the Peiho River, being the seaport of Teintsin, and my contract with the Chinese con-

87 cerned required deliveries to be made not later than the 15th of November, 1910.

21. In reply to question No. 21 deponent says: My Company was damaged by reason of the delay in the arrival of the cargo at Taku Bar, being the mouth of the Peiho River, by reason of ice having formed at the Bar and the heavy expenses incurred on a part of the cargo which was discharged there. Finally the steamer became practically icebound and after a certain delay, had to leave the Taku

Bar and proceed to the nearest port which was Chingwantao where she discharged the cargo. The loss sustained by the China Import & Export Company by reason of the delay in arrival of the cargo in China and by dead freight and demurrage for loading at Buluan was as follows:

12 days' demurrage in loading at Buluan at Mex. $250	$3000.00	
Ship's petties, coal, water, overtime, etc. 12 days	600.00	
Allowance to officers for Stevedore work	1100.00	
Difficulties in landing and cost for crane charges, etc., at Taku because of ice	3216.15	
Steamer proceeded to Chingwantao and and lost 2 days through ice, etc., at a par diem of $250 and $50 for petties	600.00	
Staff traveling expenses to Chingwantao, Mr. Ciossek $142.60 and Mr. Heim $135.90	279.50	
Rail freight from Chingwantao to Tongku	4343.43	
Riders for cars	417.28	
Expenses for Mr. Seitz trip to Peking	500.00	
	14056.36	
Wharfage at Chingwantao		Tls. 510.00
Haulage at Chingwantao		23.33
Pier dues at Chingwantao		715.00
Cranes dues at Chingwantao		200.00
Fees to Dr. Gatrell to get Chinese to forego penalty clause for late delivery		750.00
88		
Bill payable to Dock & Engineering, and now in dispute, for repair of damage done in loading		1600.00
Vessel, if properly loaded, should have carried 150,000 feet more Cotabata planks, at Tls. 10 per 1000 dead freight		1500.00
Mex. $14053.33 at exchange 74 equals		10401.71
		Tls. 15700.04

Taels 15700.04 at present rate of exchange equal to about Gold $9103.00.

22. In reply to question No. 22 deponent says: The Cargo was substantially in accordance with my contract, and I had to take the logs as best they could be supplied by the Port Banga Lumber Company, as I had to do my utmost to get as nearly as possible to the specifications to be delivered to the parties to whom I had sold the lumber in China.

23. In reply to question No. 23 deponent says: I don't think it would have been possible to do so.

24. In reply to question No. 24 deponent says: The damage my Company would have suffered would certainly have been greater. The purchasers of the cargo in China held my Company bound under a penalty clause to pay two and one-half per cent (2½%) per week on the selling price to them for damages for late delivery. Therefore, I had to get as much of the cargo as possible delivered within the contract period.

25. In reply to question No. 25 deponent says: There was a very serious disagreement between the Port Banga Lumber Company and the defendant Company in connection with the contract entered into between the defendant Company and the plaintiff Company.

89 I was informed by Mr. Redding and by Mr. Williamson of the Port Banga Lumber Company that they had entered into a contract with the defendant Company, through Mr. Payne, to supply logs at 40 or 50 Peso cents, I forget which, per cubic foot, they having been informed that my Company had purchased the logs from the defendant Company at a price of about 10 Peso cents per cubic foot higher. They informed me that their original arrangement with Mr. Payne of the defendant Company was that there should be a joint account working for the carrying out of the contract and that inasmuch as I had contracted to pay the defendant Company 90 Gold cents per cubic foot, they had been deceived and imposed upon by Mr. Payne by being lead to make the contract with him at 40 or 50 Peso cents per cubic foot, and that therefore they did not consider their contract with the defendant Company as binding upon them, same having been made under fraudulent circumstances and they were disinclined to continue delivery thereunder. As, however, they had at that time put over two-thirds of the cargo into the S. S. "Hellas", it did not seem reasonable to me that they should then stop delivery under the contract and I pointed out to them that they would be doing themselves no good by not fulfilling the agreement to the best of their ability. They finally saw the point and delivered the logs as best they could and apparently did their utmost to fulfil the terms of the contract. I understood clearly that they were doing it as a personal favor to me and to save my Company loss in the fulfillment of my contract to the Chinese. They

90 did not offer to deal with me direct or try to get my consent to a repudiation of my contract with the Export & Import Lumber Company. So far as matters appeared to me they were doing what was reasonable in carrying out the agreement and held for themselves the right of claiming damages from the Export & Import Lumber Company.

26. In reply to question No. 26 deponent says: I have not answered the foregoing question in the affirmative. The conversations I referred to in my answer to the foregoing question took place in the Military Hospital of Zamboanga, when I had a long talk with Mr. Williamson, and again on a launch a few days later when proceeding with Mr. Williamson to Buluan, and again with Mr. Williamson and Mr. Redding on board the S. S. "Hellas" at Buluan.

27. In reply to question No. 27 deponent says: I paid the full contract price, less a lump sum of Gold $8,750.00 which Mr. Payne agreed to allow in settlement of the non-fulfillment of the agreement between his Firm and mine.

28. In reply to question No. 28 deponent says: The deduction of Gold $8,750.00 was made after a lengthy discussion between Mr. Payne and myself in reference to the probable loss that would be incurred by my Company in China through the later delivery of the cargo, and I agreed to accept this sum in settlement then in preference to having to sue the Export & Import Lumber Company later at Manila for any actual loss my Company might suffer.

29. In reply to question No. 29 deponent says: The originals of the agreements entered into between the defendant Company and myself, in behalf of my Company, are not now in my possession; but I have here a copy of the agreement entered into on the
91 19th of November, 1910 (exhibit "A"), and a supplementary agreement entered into on November 28th, 1910, (exhibit "B"). (The copies referred to were here identified by the deponent at this stage of the proceedings and placed in evidence.)

30. In reply to question No. 30 deponent says: The amount of damage suffered by my Company was slightly in excess of the amount obtained from the defendant Company as liquidated damages.

31. In reply to question No. 31 deponent says: Through the Chartered Bank of India, Australia & China.

(Signed) C. L. SEITZ.

(Signed) AMOS P. WILDER,
Consul-General U. S. of A., Commissioner.

NOTE.—Every page of the deposition signed by C. L. Seitz and U. S. Consul-General Amos P. Wilder as Commissioner.

Cross-interrogatories.

1. In response to cross-interrogatory No. 1 deponent says: I did produce the contract and identify it.

2. In response to cross-interrogatory No. 2 deponent says: I answered interrogatory No. 5 by testifying to the facts within my own knowledge, having seen a copy of the contract between the defendant Company and the plaintiff Company, and also because I had
92 been directly informed by the officers of the plaintiff Company that they were carrying out my contract under a contract to the defendant Company.

3. In response to cross-interrogatory No. 3 deponent says: I received the cargo from the Port Banga Lumber Company as sub-contractors or agents of the Export & Import Lumber Company of Manila.

4. In response to cross-interrogatory No. 4 deponent says: Yes, I have such a contract for a few logs which were in dispute as to their having been loaded or not, and also covering a number of logs

which had been shipped in error and were actually rejects, and in connection with which I paid them 40 Peso cents per cubic foot and undertook to pay them a further amount in the event of the said extra logs being truly on board and provided that they would be accepted by the Chinese who were purchasing the cargo contracted for with the Export & Import Lumber Company of Manila.

5. In response to cross-interrogatory No. 5 deponent says: I hand in exhibit "C", which is a specification of logs presumably supposed to have been shipped on the S. S. "Hellas", and document marked exhibit "D" covering the same logs. Furthermore document marked exhibit "E" covering 703 cubic feet of rejected logs, and document "F" being specification of the Port Banga Lumber Company for the same logs. Also exhibit "G" for Pesos 930, with draft attached, exhibit "H", showing payment for the same. (Exhibits marked "D" "E" "F" "G" and "H" were here placed in evidence.)

93 I believe I signed a letter to the Port Banga Lumber Company undertaking to pay them a further 40 cents Peso or Gold (I am not quite certain which) currency per cubic foot on the logs presumably on board, in the event of their actually being there and being accepted by the Chinese consignees of the cargo. I have not got a copy of the letter on my files; but left a copy with the Port Banga Lumber Company at Zamboanga.

6. In response to cross-interrogatory No. 6 deponent says: No, they were not a party to the agreement for the allowance made to my Company by the defendant Company, nor agreed to, nor signed the agreement made between my Company and the defendant Company.

7. In response to cross-interrogatory No. 7 deponent says: I have handed in Exhibits "A" and "B" covering the agreement between my Company and the defendant Company for the allowance of Gold $8,750, obtained by me from the defendant Company.

(Signed) C. L. SEITZ.

(Signed) AMOS P. WILDER,
Consul-General U. S. of A., Commissioner.

NOTE.—Every page of the deposition (answering cross-interrogatories) signed by C. L. Seitz and Amos P. Wilder, Consul-General U. S. of A. as Commissioner.

94 I, Amos P. Wilder, Consul General of the United States of America at Shanghai, China, hereby certify that pursuant to said commission, I caused the said C. L. Seitz to appear before me at my office in Shanghai, China, on the 16th day of March, 1911; that he was duly sworn to tell the truth, the whole truth and nothing but the truth and his evidence taken down, and after which the same was carefully read over to the said C. L. Seitz, corrected and signed by him in my presence and took oath before me in due form that the said deposition so subscribed by him contained the truth, the whole truth and nothing but the truth; that I have personally knowledge of the identity of said witness and that he is the person named in said commission and interrogatories an-

nexed, and that I am not of counsel or kin to any of the parties to the cause, or in any manner interested in the action; and that the said deposition was sealed up by me and directed *it* to the Clerk of the Court of First Instance of the Moro Province, 14th Judicial District, at Zamboanga, Island of Mindanao, Philippine Islands.

Witness my hand and seal of office, this 21st day of March, 1911, at Shanghai, China.

(Signed) AMOS P. WILDER,
Consul General of the United States of America, Commissioner.

[Seal of American Consulate General.]

American Consular Service Fee Stamps to the value of U. S. $26.00 pasted on this certificate.

95 (Continuation of certificate of Amos P. Wilder, American Consul-General at Shanghai, China.)

Fees and Charges:

Taking Deposition 3650 words as per stamps attached..U. S. $26.00

Services of Stenographer:

2 hours taking down..... 4.00
Transcribing 3444 words at..... 9.00
—— U. S. $13.00

Total due for Commission.....U. S. $39.00

Paid by Attorney for Defendant.

96 EXHIBIT "A."

ZAMBOANGA, 19th November, 1910.

It has this day been mutually agreed between the Export and Import Lumber Company of Manila and the China Import & Export Lumber Co. of Shanghai, China, that in consideration of

1. the improper loading and stowing of the cargo of Pagatpat Logs shipped per s. s. "Hellas" under contract between the parties hereto dated the 6th May, 1910, and the delay caused thereby to the vessel of about 16 (sixteen) days and

2. because the said delay in loading has caused the China Import and Export Lumber Co. to become liable for damages payable to the consignees in China of the said cargo and

3. because through the said delay there is grave and imminent risk that the said cargo cannot be discharged at Tongku before the closing of the said port by ice causing further loss through discharge becoming necessary at some neighboring port and transhipment being made in Spring to Tongku, the penalty or damages for nondelivery at Tongku continuing meantime payable to the ultimate consignees of the cargo

and furthermore in consideration of the fact that the said contract for Pagatpat logs has not been properly fulfilled in that a certain number of the large pieces of 10′ 6″ circumference have not
97 been supplied but smaller pieces loaded instead thereof which renders the China Import & Export Lumber Co. liable to their clients in China for damages for nondelivery of the said pieces according to contract and in consideration of the fact that under the contract dated the 6th day of May, 1910, entered into between the parties hereto the Export & Import Lumber Co. is liable for such damages as recited it has this day been agreed to compromise and adjust the difficulties which have arisen on an equitable and friendly basis and the Export & Import Lumber Co. of Manila undertakes in consideration of being relieved of all risk of loss claims and damages of any nature whatsoever under the Pagatpat contract of the 6th May, 1910, to pay unto the China Import & Export Lumber Co. the sum of G. $8,750. (Gold Dollars Eight thousand seven hundred and Fifty) as liquidated damages for nonfulfillment of the said contract and the China Import & Export Lumber Co. agrees and undertakes to accept the said sum of G$8,750. in full settlement of any claims they may have against the said Export & Import Lumber Co. and accepts all risks of loss and damage as being solely for its own account and furthermore undertakes to consider the Pagatpat agreement of the 6th day of May, 1910, as having been fulfilled and completed by the Export & Import Lumber Co.

The General Manager of the China Import & Export Lumber Co. further agrees to sign legal documents covering this agreement as above recited to be drawn up by the Lawyers of the Export & Import Lumber Co. at Manila in legal phrasing so that the said Export & Import Lumber Co. shall be forever relieved from liability
98 to the China Import & Export Lumber Co. under the said Pagatpat agreement of the 6th May, 1910.

It is further agreed that the sum of G$8,750.—payable by the Export and Import Lumber Co. as above recited shall be deducted by them from the invoice value of the Pagatpat shipped on the S. S. "Hellas" against which the China Import & Export Lumber Co. has established a credit in favor of the Export & Import Lumber Company through the Chartered Bank of India, Australia & China.

In witness whereof we, the undersigned, have hereunto set our hands this the 11th day of November, 1910.

EXPORT & IMPORT LUMBER CO.,
By W. W. PAYNE, *Pres't.*
CHINA IMPORT & EXPORT LUMBER CO., LTD.,
C. L. SEITZ, *General Manager.*

(Indorsed on back of copy furnished with Mr. C. L. Seitz's deposition as follows:)

Civil Case No. 275.

PORT BANGA LUMBER COMPANY
v.
EXPORT & IMPORT LUMBER COMPANY.

This is Exhibit A produced, identified and put in evidence.
(Signed) C. E. SEITZ.

AMOS P. WILDER,
Consul Gen'l U. S. of A., Commissioner.

[Seal of American Consulate General, Shanghai.]

99 EXHIBIT "B".

This memorandum of settlement made and entered into at Manila, P. I., this 28th day of November, 1910, by and between the Export & Import Lumber Company, of Manila, hereinafter known as the vendor, and the China Import & Export Lumber Company, of Shanghai, China, hereinafter known as the vendee, Witnesseth:—That whereas, on the 6th day of May of this year, the parties hereto entered into an agreement whereby the vendor agreed to seel and deliver to the vendee a certain quantity of Philippine Pagatpat wood of certain dimensions at the price and upon the conditions stipulated in said contract of May 6th, 1910, to which reference is hereby made, and

Whereas, the vendor subcontracted the supply and delivery of said wood with the Port Banga Lumber Company under agreement of 10th of June, 1910, to which reference is hereby made, and

Whereas, the said Port Banga Lumber Company supplied and delivered a cargo of wood on board the S. S. "Hellas" which failed to comply with the conditions and specifications of the contract between the parties hereto and the said sub-contract between the vendor and the Port Banga Lumber Company, but which cargo the vendee herein was obliged to take from the vendor and the vendor was obliged to take from the Port Banga Lumber Company in order to avoid further penalties and damages, and

100 Whereas, as a result of the failure to provide the wood in accordance with specifications and of the improper loading of the cargo and the unnecessary delay in accomplishing the same, the vendee herein refused to pay to the vendor the price stipulated in the contract and the latter in order to avoid litigation and liability for a larger sum agreed to deduct from the stipulated contract price for said wood as liquidated damages the sum of eight thousand seven hundred and fifty dollars ($8,750.00) U. S. currency, all of which is set forth in a certain memorandum of agreement entered into between the parties hereto on the 19th instant, to which reference is hereby made, and

Whereas, it is provided in said agreement that a formal contract shall be executed between the parties on their arrival in Manila, and

Whereas, the matter of the cash settlement between the parties hereto for the price of the said cargo of Pagatpat wood and the allowance and deduction of said sum of $8,750.00 as liquidated damages is shown by the documents and records of the Chartered Bank of India, Australia & China, to which reference is hereby made, and

Whereas, the nature of the non-fulfillment by the vendor and the Port Banga Lumber Company as sub-contractor of said contract with the vendee in so far as the sizes of the logs supplied is shown by the specifications of Pagatpat logs shipped per S. S. "Hellas" of date November 16th, 1910, made and approved in quintuplicate by the parties hereto in conjunction with the said Port Banga Lumber Company and a copy of which was retained by each of the
101 parties hereto as well as by the said Port Banga Lumber Company and to which specification reference is hereby made, and

Whereas, said memorandum of agreement of settlement of November 19th, 1910, between the parties hereto recites with sufficient clearness the true facts with reference to the non-fulfillment of said contract except that it omits one detail of actual damage suffered by the vendee to-wit: the said vendor and the Port Banga Lumber Company having failed to furnish any competent Stevedores or persons able to in any manner load or stow the cargo in the ship, the vendee in order to save itself from further loss for demurrage and damages was obliged to hire the crew of the S. S. "Hellas" to assist in loading and stowing said cargo paying them therefor the sum of $1,100.00 Mexican dollars, which amount is included in the total sum of $8,750.00 U. S. currency deducted from the purchase price of said wood as liquidated damages under the said contract,

Now therefore, the parties hereto hereby ratify their said agreement of settlement together with the explanations and clarifications of the same hereinbefore set forth.

In witness whereof, the parties hereto have hereunto set their hands and seals the day and year first above written.

EXPORT & IMPORT LUMBER COMPANY,

(Sgd.) By WM. W. PAYNE, *President.*

CHINA IMPORT & EXPORT LUMBER COMPANY,

(Sgd.) By C. L. SEITZ, *General Manager.*

102 (CONTINUATION OF EXHIBIT "B.")

PHILIPPINE ISLANDS,
City of Manilla, ss:

On this — day of November, 1910, before me the undersigned notary public, personally appeared Wm. W. Payne, as President of the Export & Import Lumber Company of Manila, P. I., and C. L. Seitz, as General Manager of the China Import and Export Lumber Company of Shanghai, China, known to me to be the same persons who executed the foregoing instrument, and they acknowledged to me that the same is their free act and deed.

Mr. Payne exhibited cedula No. G-95590 dated at Manila, May 9, 1910,—
Mr. Seitz.

——— ———,
Notary Public.

My commission expires Dec. 31, #810.

(Indorsed on back of copy furnished with deposition of Mr. C. L. Seitz as follows:)

Civil Case No. 275.

PORT BANGA LUMBER CO.
v.
EXPORT & IMPORT LUMBER CO.

This is Exhibit "B" produced, identified and put in evidence.
(Signed) C. L. SEITZ.

AMOS P. WILDER,
Consul General U. S. of A., Commissioner.

[Seal of American Consulate General, Shanghai.]

103 EXHIBIT "C".

Specifications of Logs Presumably Shipped on S/S "Hellas" and to be Accounted for by the China Import & Export Lumber Co. to the Port Banga Lumber Co. on Discharge of Cargo as Specially Arranged.

1	#99	40′ 5″ x 9′	27..	202 Cubic feet.
2	111	20′ 7″ x 7′	5″ 22..	70
3	216	20′ 2″ x 7′	6″ 22½	70
4	355	30′ .. x 6′	4″ 19..	75
5	364	31′ .. x 5′	5″ 16..	55
6	9	23′ 3″ x 6′	10″ 20½	67
7	131	25′ 4″ x 6′	4″ 19..	63
8	324	24′ 4″ x 8′	9″ 26..	112
9	39	24′ 6″ x 7′	3″ 22..	80
10	120	26′ 3″ x 7′	... 21..	80
11	280	26′ .. x 7′	9″ 23..	95
12	135	39′ 4″ x 9′	1″ 27..	197
13	124	31′ 6″ x 6′	11″ 21..	95
14	134	29′ 1″ x 7′	1″ 21..	89
15	142	31′ .. x 6′	11″ 21..	95
				1445 Cubic feet.

Log lost overboard of breaking of steel shackle:

	#81	35′ x 9′	0″ 27..	177 " "
				1622 Cubic feet.

Zamboanga, 16/11, 1910.

(Indorsed on back of copy furnished with deposition of Mr. C. L. Seitz as follows:)

Civil Case No. 275.

PORT BANGA LUMBER CO.
v.
EXPORT & IMPORT LUMBER CO.

This is Exhibit "C" produced, identified and placed in evidence.
(Signed) C. L. SEITZ.

AMOS P. WILDER,
Consul General U. S. of A., Commissioner.

[Seal of American Consulate General, Shanghai.]

104 EXHIBIT "D".

Specifications of Logs Presumably Shipped on S/S "Hellas" and to be Accounted for by the China Import & Export Lumber Co. to the Port Banga Lumber Co. on Discharge of Cargo as Specially Arranged.

1	#99	..	40′ 5″	x 9′	... 27..	202	Cubic feet.
2	111	..	20′ 7″	x 7′	5″ 22..	70	
3	216	..	20′ 2″	x 7′	6″ 22½	70	
4	355	..	30′ ..	x 6′	4″ 19..	75	
5	364	..	31′ ..	x 5′	5″ 16..	55	
6	9	..	23′ 3″	x 6′	10″ 20½	67	
7	131	..	25′ 4″	x 6′	4″ 19..	63	
8	324	..	24′ 4″	x 8′	9″ 26..	112	
9	39	..	24′ 6″	x 7′	3″ 22..	80	
10	120	..	26′ 3″	x 7′	... 21..	80	
11	280	..	26′ ..	x 7′	9″ 23..	95	
12	135	..	39′ 4″	x 9′	1″ 27..	197	
13	124	..	31′ 6″	x 6′	11″ 21..	95	
14	134	..	29′ 1″	x 7′	1″ 21..	89	
15	142	..	31′ ..	x 6′	11″ 21..	95	
						1445	Cubic feet.

Log lost overboard by breaking of steel shackle:

	#81	..	35′	x 9′	0″ 27..	177	" "
						1622	Cubic feet.

Zamboanga, 16/11, 1910.

(Rubber stamp mark of International Banking Corporation, Shanghai.)

PORT BANGA LUMBER CO. (INC.),
(Sgd.) By F. P. WILLIAMSON, *Vice President.*

(Indorsed on back of copy furnished with deposition of Mr. C. L. Seitz as follows:)

Civil Case No. 275.

PORT BANGA LUMBER CO.
v.
EXPORT & IMPORT LUMBER CO.

This is Exhibit "D" produced, identified and placed in evidence.

(Signed) C. L. SEITZ.

AMOS P. WILDER,
Consul General U. S. of A., Commissioner.

[Seal of American Consulate General, Shanghai.]

105 EXHIBIT "E".

Memorandum of Rejected Logs Shipped on S/S "Hellas."

1	#254	..	24′ ..	x 4′ 10″	14½	x 14½	..	35	Cubic	feet.
2	353	..	20′ 9″	x 7′ 5″	22	x 22	..	70	"	"
3	378	..	24′ 6″	x 5′ 6″	16½	x 16½	..	45	"	"
4	365	..	23′ 6″	x 5′ 6″	16½	x 16½	..	44	"	"
5	204	..	22′ 6″	x 5′ ...	15	x 15	..	34	"	"
6	199	..	19′ ..	x 4′ 2″	12½	x 12½	..	20	"	"
7	221	..	20′ 6″	x 4′ 6″	13½	x 13½	..	25	"	"
8	417	..	24′ 3″	x 5′ 9″	17	x 17	..	48	"	"
9	409	..	20′ 3″	x 4′ 3″	13	x 13	..	23	"	"
10	247	..	23′ 4″	x 4′ 7″	14	x 14	..	31	"	"
11	220	..	not measured		say		..	25	"	"
12	402	..	29′ ..	x 6′ 10″	20½	x 20½	..	84	"	"
13	34	..	not measured		say		..	25	"	"
14	400	..	do.		say		..	25	"	"
15	395	..	24′ ..	x 6′ ...	18	x 18	..	54	"	"
16	218	..	24′ ..	x 5′ 4″	16x16	not marked		43	"	"
17	362	..	23′ ..	x 5′ 9″	17	x 17	..	46	"	"
18	274	..	19′ ..	x 4′ 7″	14	x 14	..	26	"	"
						Cubic feet		703		

Zamboanga, 16/11, 1910.

(Indorsed on back of copy furnished with deposition of Mr. C. L. Seitz as follows:)

Civil Case No. 275.

PORT BANGA LUMBER CO.
v.
EXPORT & IMPORT LUMBER CO.

This is Exhibit "E" produced, identified and placed in evidence.

(Signed) C. L. SEITZ.

AMOS P. WILDER,
Consul General U. S. of A., Commissioner.

[Seal of American Consulate General, Shanghai.]

106 EXHIBIT "F".

Memorandum of Rejected Logs Shipped on S/S "Hellas."

1	254	..	24′	.. x	4′	10″	14½	x 14½	.. 35	Cubic feet.
2	353	..	20′	9″ x	7′	5″	22	x 22	.. 70	"
3	378	..	24′	6″ x	5′	6″	16½	x 16½	.. 45	"
4	365	..	23′	6″ x	5′	6″	16½	x 16½	.. 44	"
5	204	..	22′	6″ x	5′	...	15	x 15	.. 34	"
6	199	..	19′	.. x	4′	2″	12½	x 12½	.. 20	"
7	221	..	20′	6″ x	4′	6″	13½	x 13½	.. 25	"
8	417	..	24′	3″ x	5′	9″	17	x 17	.. 48	"
9	409	..	20′	3″ x	4′	3″	13	x 13	.. 23	"
10	247	..	23′	4″ x	4′	7″	14	x 14	.. 31	"
11	220	..	not	measured			say		.. 25	"
12	402	..	29′	.. x	6′	10″	20½	x 20½	.. 84	"
13	34	..	not	measured			say		.. 25	"
14	400	..		do.			say		.. 25	"
15	395	..	24′	.. x	6′	...	18	x 18	.. 54	"
16	218	..	24′	.. x	5′	4″	16x16	not marked	43	"
17	362	..	23′	.. x	5′	9″	17	x 17	.. 46	"
18	274	..	19′	.. x	4′	7″	14	x 14	.. 26	"
								Cubic feet	703	

Zamboanga, 16/11, 1910.

Stamp of Int. Bank. Corp. Shanghai.

PORT BANGA LUMBER CO. (INC.),
By F. P. WILLIAMSON, *Vice-President.*

(Indorsed on back of copy furnished with deposition of Mr. C. L. Seitz as follows:)

Civil Case No. 275.

PORT BANGA LUMBER CO.
v.
EXPORT & IMPORT LUMBER CO.

This is Exhibit "F" produced, identified and put in evidence.
(Signed) C. L. SEITZ.

AMOS P. WILDER,
Consul General U. S. of A., Commissioner.

[Seal of American Consulate General, Shanghai.]

107 EXHIBIT "G".

ZAMBOANGA, P. I., November 19th, 1910.

The China Import & Export Lumber Co., Ltd., Shanghai, to Port Banga Lumber Co., Dr.

18 logs rejected but loaded on S/S "Hellas"		703	cub. ft.
15 " presumably loaded		1445	" "
1 " lost overboard		177	" "
	2325 cub. ft. at 40¢	P930.00	

E. & O. E.

PORT BANGA LUMBER CO. (INC.)
By F. P. WILLIAMSON, *Vice-President.*

(Indorsed on back of copy furnished with deposition of Mr. C. L. Seitz as follows:)

Civil Case No. 275.

PORT BANGA LUMBER CO.
v.
EXPORT & IMPORT LUMBER CO.

This is Exhibit "G" produced, identified and put in evidence.
(Signed) C. L. SEITZ.

AMOS P. WILDER,
Consul General U. S. of A., Commissioner.

[Seal of American Consulate General, Shanghai.]

108 EXHIBIT "H".

ZAMBOANGA, P. I., November 19th, 1910.

Exchange for P930.00.

At — sight pay this Second of Exchange (First being unpaid) to the Order of The Internat'l Banking Corp., Manila, Pesos Nine hundred thirty only. Value received and charge the same to account of—. To The China Import & Export Lumber Co., Ltd., Shanghai. No. 102.
(Stamped by Int. Bank. Corp. Manila.)
(Marked "Paid".)

PORT BANGA LUMBER CO. (INC.)
By F. P. WILLIAMSON, *Vice-President.*

(Indorsed on back of copy furnished with deposition of Mr. C. L. Seitz as follows:)

Civil Case No. 275.

PORT BANGA LUMBER CO.
v.
EXPORT & IMPORT LUMBER CO.

This is Exhibit "H" produced, identified and put in evidence.
(Signed) C. L. SEITZ.

AMOS P. WILDER,
Consul General U. S. of A., Commissioner.

[Seal of American Consulate General, Shanghai.]

109 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the Moro Province.

No. 275.

PORT BANGA LUMBER CO.
v.
EXPORT & IMPORT LUMBER CO.

Comes now the defendant in the above-entitled case, by Gibbs & McDonough, its attorney, and moves the Court for a continuance of the trial of this case for the purpose of obtaining the deposition or presence of Mr. W. W. Payne, president of the defendant corporation and respectfully represents to the Court:
That heretofore and prior to the 20th day of September, 1911, counsel for both parties stipulated that the trial of this case should

be held open pending the taking of the deposition of said Payne during the month of December, 1911. That therefore, to-wit: on the 19th day of September, 1911, this Honorable Court notified counsel for defendant that the trial of this case would be closed and decision rendered without the deposition of said Payne; that said notice is attached hereto and marked Exhibit "A", and made part of this motion.

That thereafter, to-wit: on the 20th day of September, 1911, defendant advised this Honorable Court of the stipulation of counsel for both parties above mentioned and thereafter on the 29th
110 of September, 1911, defendant filed with the record in this case the agreement by counsel for plaintiff that the deposition of said witness, Payne, should be taken in the month of December, 1911, which said agreement in the form of a cablegram from counsel for plaintiff to counsel for defendant, is now on file in this case, copy of which is attached hereto, marked Exhibit "B" and made part hereof.

That thereafter and on the 13th day of November, 1911, counsel for plaintiff notified defendant's counsel that the trial of this case would be had on December 7th, 1911, which said notice is attached hereto and marked Exhibit "C".

That defendant has been unable to secure such deposition of Payne from the date of the notice of trial up to this time for the reason that said W. W. Payne is now absent in India and was so absent at the time of the receipt of said notice of trial by defendant.

That due diligence has been exercised to secure such deposition or the presence of said witness by defendant as more fully appears from the affidavit of Mr. Chas. A. McDonough, attached hereto and made part hereof.

That said witness, W. W. Payne is a necessary and material witness for the defense and defendant cannot proceed to the trial of this case on the date set without his deposition or presence.

Wherefore defendant prays the Court for a continuance of this case for the purpose of obtaining the presence of said witness, W. W. Payne, or his deposition for use upon the trial.

111 This motion is made at this time in writing for the reason that counsel for defendant upon arrival in Zamboanga proceeded directly to the court room on December 12, 1911, for the reason that the Court was about to leave Zamboanga, and the same motion was made orally before the said Court with permission to counsel for defendant to afterwards submit his motion for a continuance in writing, this being the first day of this Court's return to Zamboanga.

Zamboanga, P. I., December 18th, 1911.

(Signed) GIBBS & McDONOUGH,
By C. A. McDONOUGH,
Attorneys for Defendant.

Exhibit "A" mentioned in foregoing motion was not attached thereto.

Exhibit "B" mentioned therein is as follows:

"The Eastern Extension Australasia & China Telegraph Company, Limited. Manila Station.

"The following Telegram received via Eastern, at 10/5 A. M., 29-Sept.-11.

HONGKONG, 7, 29, 9/50 A. M.

"McDonough, Manila.

Agree Payne Deposition December.

YEAGER."

Exhibit "C" mentioned in foregoing motion was not attached thereto.

112 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the Moro Province.

No. 275.

PORT BANGA LUMBER CO.
vs.
EXPORT & IMPORT LUMBER CO.

UNITED STATES OF AMERICA,
Philippine Islands, City of Zamboanga, ss:

Charles A. McDonough, being first duly sworn, deposes and says: that he is a member of the firm of Gibbs & McDonough, attorneys for the defendant in the above entitled action; that immediately upon receipt of notice from plaintiff that the trial of the above entitled case would be again taken up the first week in December, 1911, proceeded to ascertain the possibility of securing the presence of the witness, W. W. Payne at the trial, or his deposition for presentation thereat; that at that time said W. W. Payne was in India where he had gone after being informed that his deposition would be taken in December, 1911, he being present in Manila at the time of the stipulation entered into between plaintiff's attorneys and attorneys for defendant; that notice having been received on November 13, 1911, by affiant, that the trial would be had on December 7, 1911, affiant found that it would be impossible for said Payne to arrive in the Philippine Islands from India in time for said trial,
113 and that there would be no mails by which the deposition of said Payne could be taken so as to offer same at the trial on the date set; that affiant then wired plaintiff's attorneys asking for a continuance of said trial and advising them of the whereabouts of said Payne and the impossibility of securing his presence or deposition before the date of trial, but plaintiff's attorneys refused to accede to a continuance; that said Payne left the City of Manila after the stipulation between the attorneys for both parties agreeing that his deposition be taken in December, 1911, said stipulation having been

made by said counsel in the City of Manila, on or about the 15th of September, 1911, the counsel for plaintiff being present in said city at that time. That it would be a physical impossibility to obtain the presence or deposition of said witness, Payne, before the said 7th day of December, 1911; that counsel for defendant, that is to say affiant, proceeded to Zamboanga and arrived in Zamboanga on the 12th day of December, 1911, and immediately upon his arrival proceeded to the court-room and to the trial of the case, at that time making a motion orally for a continuance of the case because of lack of time to make same in writing before the departure of the Court, which was set for the afternoon of said 12th of December, but permission was granted affiant to later present his said motion in proper form. That said Court left Zamboanga on the afternoon of December 12, 1911, and returned this date.

That said witness, W. W. Payne, is an important and material witness for the defendant; he is the President of the defend-
114 ant corporation and the one with whom the plaintiff alleges the oral joint account agreement was made and the one alleged by plaintiff to have practiced the fraud upon it as set forth in plaintiff's complaint; that he is informed and verily believes that said Payne will testify that neither he, nor any member of defendant company ever made a joint account agreement with plaintiff as testified to by the witnesses for the plaintiff with reference to the pagatpat logs in question and will deny that he ever at any time admitted the making of such a contract and will deny that any acts of fraud were ever practiced by him upon plaintiff, or any of its officers or members, in connection with the execution or making of the written contract referred to in the complaint and answer, and marked Exhibit 5 for the defendant upon the trial of this case and received in evidence; and that said Exhibit 5 is the only contract ever entered into between plaintiff and defendant with regard to the pagatpat logs in question in this case; and that he will especially deny that he ever made the false statements or representations to plaintiff set out in plaintiff's complaint, or as testified to upon this trial by the witnesses for plaintiff, or any of said statements or representations;

Affiant further states that the said W. W. Payne is the only witness who can testify as to these points and that this testimony is material to the defense of the above entitled action; that the statements herein made as to the evidence of said witness, Payne, are based upon knowledge acquired by affiant from conversations
115 had with said Payne, as counsel for defendant in the above entitled case.

Dated, Zamboanga, P. I., December 18, 1911.

(S'g'd) CHAS. A. McDONOUGH.

Subscribed and sworn to before me this 19th day of December, 1911, affiant exhibiting his cedula No. F27561 issued at Manila, P. I., March 4, 1911.

(S'g'd) FELIPE FABIAN,
Acting Clerk.

[Seal of Court of First Instance, Zamboanga.]

116 UNITED STATES OF AMERICA,
Philippine Islands.

In the Court of First Instance for the Moro Province.

No. 275.

PORT BANGA LUMBER CO.
vs.
EXPORT & IMPORT LUMBER CO.

It is admitted by counsel for the plaintiff that the witness W. W. Payne, if present upon this trial, would testify as set out by counsel for defendant, Charles A. McDonough, in his affidavit attached to the motion for a continuance of the trial of this case presented this date.

Zamboanga, P. I., this 19th of December, 1911.

(Sgd.) YEAGER & GIBBENS,
Counsel for Plaintiff.

Counsel for defendant, therefore, abandons his motion for continuance.

Zamboanga, P. I., this 19th of December, 1911.

(Sgd.) GIBBS & McDONOUGH,
By C. A. McDONOUGH,
Counsel for Defendant.

117 Fourteenth Judicial District.

THE UNITED STATES OF AMERICA,
Philippine Islands, Moro Province:

In the Court of First Instance of the District of Zamboanga.

Civil Case No. 275

PORT BANGA LUMBER CO., Plaintiff,
vs.
EXPORT & IMPORT LUMBER CO., Defendant.

Decision.

The Plaintiff, the Port Banga Lumber Company, doing business in Zamboanga, brings this action against the Defendant, the Export and Import Lumber Company of Manila, alleging that it entered into an oral agreement with the Defendant Company, whereby the Defendant undertook to secure orders from China for logs and the Plaintiff agreed to fill the orders at their mill and timber concessions at and near Port Banga in the Moro Province, and that the agreement was that this business should be conducted as a joint account adventure, and that after deducting Plaintiff's and Defend-

ant's expenses for obtaining the order for logs and filling said order for logs, the profit was to be equally divided between the Plaintiff and Defendant companies. That this oral agreement was made in December, 1909, and in pursuance thereof Mr. Payne, President of the Defendant Company, went to China and obtained the
118 order for said logs and on the 6th day of May, 1910, closed a written contract with the China Export and Import Lumber Company to deliver 40,000 cubic feet, more or less, of pagatpat logs, at 90 cents, gold, per cubic foot; that Mr. Payne, the President of the Defendant Company, went to Zamboanga about the middle of May, 1910, where he falsely and fraudulently represented to the Plaintiff that the best price he had been able to obtain from the China Company was 55 cents, Philippine Currency, per cubic foot, whereas in truth and in fact the price was P1.80, Philippine Currency, per cubic foot; and that the Plaintiff through its officers, believing said statement to be true and relying thereon, was induced by Mr. Payne, the President of the Defendant Company, to make a different and much less advantageous agreement with the Defendant, wherein the Plaintiff contracted to sell to the Defendant the logs so ordered by the China Company, at the price of 40 cents, Philippine Currency, per cubic foot. This agreement was entered into in writing and is marked Exhibit "B". The oral joint account agreement is denied by the Defendant, which alleges that the only agreement ever entered into concerning the logs was the written agreement of purchase and sale, marked Exhibit "B."

The Defendant also sets up a counter-claim, alleging damages for the non-fulfillment of the terms of the written contract, Exhibit "B." The Plaintiff asks that the contract marked Exhibit "B" be declared null and void by this Court on the ground of fraud, and that the terms of the oral or joint account agreement be enforced and that a judgment be rendered in its favor of P14,422.86, the amount of the Plaintiff's expenses in supplying the logs, together with
119 one-half of the net profit on the joint adventure, amounting it alleges to P21,617.37, making a total of P36,400.23, together with the costs of this action.

On the other hand the Defendant asks that the contract marked Exhibit "B" be enforced; that the Plaintiff take nothing on this complaint; that the same be dismissed; and that judgment be rendered in favor of the Defendant on its counter-claim for P17,500. damages for breach of the written contract Exhibit "B" and for costs. In other words, the Defendant would have the Court decide that the Plaintiff must furnish 32032 cubic feet of pagatpat logs for nothing and in addition pay the Defendant P17,500. damages for not supplying them in time to the China Company and for which the China Company had contracted to pay P57,657.60.

The questions involved will be taken up in the following order. First: Was there an oral agreement to furnish the logs to the China Company, as a joint adventure, on joint account as contended by the Plaintiff? Second: If there was such an agreement was it superseded by the written contract of May 6th, 1910, marked Exhibit "B," subsequently entered into? Third: Was the substitution

of the written contract, Exhibit "B" for the oral joint account agreement procured by the Defendant through fraud and false representations? Fourth: If it was obtained by fraudulent means did the Plaintiff affirm it after discovering the fraud and thus become estopped from asking this Court to annul the same and to enforce the terms of the oral agreement?

120 A joint adventure is in its nature a limited partnership: not limited in a statutory sense as to liability, but as to its "duration," (Ross vs. Willett, 27 N. Y., 785), 23 Cyc. 453, A., and such an agreement need not set out all of the details as to the manner in which the adventure or business is to be carried out. 23 Cyc. 454, D. The proof of such an agreement may consist in part of the circumstances surrounding the entire transaction. 23 Cyc., p. 453, A and Note 10, 23 Cyc., p. 482, F.

In the first place in the testimony it is shown that the Plaintiff and Defendant Companies had been doing business together for a considerable time prior to the transaction involved in this case and that the Plaintiff had had dealings with the defendant involving over P100,000. without any written agreements of any kind and that the officers of the Plaintiff Company and the Defendant Company were on the most cordial and intimate business terms, so much so that an amalgamation of the business of the two corporations had been considered, and that at the time the transaction was entered into out of which this suit arises, negotiations were on foot looking to a combination and reorganization of the two companies and their union in one corporation. (Trns. pages 68, 69, and 86, and page 6, Deposition of Adams.) In December, 1909, the President of the Defendant Company, Mr. Payne, first proposed to the Plaintiff through its Vice-President, Mr. Williamson, that the Defendant Company should obtain a contract in China for logs and that the Plaintiff Company should fill the same, and that

121 the two companies "would do it together." Mr. Williamson testifies that Mr. Payne said to him "We would do it together." (Trans. page 3.) Later Mr. Payne went to China, and in the February following, during Mr. Payne's absence in China, Mr. Williamson and Mr. Adams, the Assistant Manager of the Defendant Company, took up the matter and Mr. Wiliamson was informed as to the size of the logs that would be required to supply the order to China. (Deposition of Mr. Adams, page 2). A month later on the return of Mr. Payne from China in March, Mr. Williamson and Mr. Payne again took up the subject of supplying these logs to the people in China and after discussing the details of the business the following conversation was had:

Mr. WILLIAMSON: "Now, Mr. Payne, how are you going to do the business?"

Mr. PAYNE: "Together, just as I said before."

Mr. WILLIAMSON: "What do you mean by together?"

Mr. PAYNE: "Joint account."

Mr. WILLIAMSON: "All right, we agree to that."

(Trns. page 5.) A month after this, namely April 28th, Mr. Williamson in reply to a telegram asking him to send firm offer

for thirty days covering pagatpat logs for China, "Cannot get on without firm offer will be required for bankers," Mr. Williamson telegraphed, "We do not quite understand your telegram. We thought you were arranging the price and details and that the business not familiar to us," and immediately wrote the Defendant, "we thought you were aranging the price and details and that the business was to be done on joint account." (Exhibit "1," Depo-
122 position of Mr. Adams.) Why did Payne want a firm offer from the Plaintiff? Evidently he could not close the contract with the China people for these logs until he could show them and the bankers a telegram that would convince them he had made arrangements to supply the logs if the contract was awarded to him. It could have been for no other purpose and it is impossible to believe that it was intended as a binding offer on the part of the Plaintiff to furnish logs, the dimensions of which he had not then been informed, logs of unusual lengths, diameters and weights. It was evidently intended merely to assist Payne in getting the contract which was entered into between the Defendant and the China Company on May 6th, 1910, and in which it appears that the logs were to be shipped "at a port, presumedly Port Banga," where the Plaintiff had its mills. Would any business man enter into such a contract as this without knowing in advance where and from whom he was going to get logs, logs larger, longer and heavier than had ever been exported from the Philippine Islands, so far as known; an unusual order for timber to be used in the erection of the Mausoleum or tomb to the late Emperor of China? Why did Payne mention Port Banga in the China contract if he did not already have this joint agreement with the Plaintiff, as the Plaintiff claims, to supply the logs? And yet, Payne would have the Court believe that this was all done before he had any contract or agreement with the Plaintiff Company to fill this order. Again on page 18 of the transcript Mr. Williamson testifies: Question. "Was there any con-
123 tract that you know, at that time of that conversation, looking to the sale of the logs?

Answer. "No, no contract as far as I know."

Question. "Was there any prospect?"

Mr. WILLIAMSON—Answer. "That was his end of it. He had lived in Shanghai for years. That was his part, to see if we could sell the cargo of logs up there, and I said, 'How are we going to do the business?', and he said, 'Together'." And on page 19, Mr. Williamson: "He said it was a good chance to sell a cargo of logs in China." On pages 20 and 21, Mr. Williamson: "In the latter part of April or the first of May, Mr. Payne and I were discussing the dimensions of the logs, etc., and he said in answer to a question as to finances, 'There will be no trouble at all.' That this (The China firm), 'was a wealthy outfit and would not hesitate to advance money at any time. They would be willing to send down and give us a fair advance on the logs.'" And in speaking of the price, Williamson testified: "He said, 'never mind, that is my end of it. If we can get this first contract and get these other contracts, we will make enough money. You leave that to me.' And I said, 'All

right.' No contract had yet been obtained so far as the China people were concerned." After the contract of May 6th with the China people had been signed in Manila by Mr. Payne, he went to Zamboanga to see Mr. Williamson and according to the testimony of Mr. Williamson, Mr. Redding and Mr. Selg, he admitted repeatedly the existence of the joint account agreement to furnish these logs to
the China Company but he said he wished to change it to a
124 contract of purchase and sale between the Plaintiff and the
Defendant Companies, and he gave his reasons for so doing, that it would be difficult to agree on their expense accounts and that as he had been able to secure a price of only 55 cents, Philippine Currency, a cubic foot for the logs, it would be the same in the end if they made it a purchase and sale agreement, the Plaintiff Company to take 40 cents a foot and the Defendant Company 15 cents a cubic foot. He repeatedly assured the Plaintiff that 55 cents was the contract price with the China Company and that that was the best he had been able to do.

Mr. Payne has not assisted this Court in arriving at a decision in this case by appearing on the stand to testify nor even by making a deposition, although it has been pending more than a year. The witnesses for the Plaintiff have testified and have been subjected to a very able and searching cross-examination by Mr. McDonough, Attorney for the Defendant Company. At the time this case came on for trial in December, 1911, the Attorney for the Defendant, asked to have a further continuance, which the Court refused to grant, as the Attorney for the Defendant was unable to assure the Court that Mr. Payne would ever appear to testify in this case, or that his deposition would be taken. There is nothing therefore to meet and overcome the testimony of the witnesses for the Plaintiff, excepting an admission made by the Plaintiff's Attorney, that if Mr. Payne had been present at the trial he would have testified that he never at any time admitted the making of such a contract (meaning the oral joint account agreement), and would deny that
125 any acts of fraud were ever practiced by him upon the Plaintiff or any of its officers or members, in any connection with the execution or making of the written contract referred to in the complaint and answer: and that the written contract, Plaintiff's Exhibit "B," is the only contract ever entered into between the Plaintiff and the Defendant with regard to the Pagatpat logs in question in this case, and that he would especially have denied that he ever made the false statements or representations to the Plaintiff set out in the Plaintiff's complaint, or as testified to upon this trial by the witnesses for the Plaintiff, or any of said statements or representations.

The Court is fully convinced from the testimony of the witnesses for the Plaintiff and from all of the surrounding circumstances that the oral agreement was made as alleged in the Plaintiff's complaint.

The evidence fully satisfies the Court that the second or written contract was secured from the Plaintiff by the Defendant by means of false and fraudulent representations made by Mr. Payne, the President of the Defendant Company, to Mr. Williamson, the Vice-

President of the Plaintiff Company, and that the Plaintiff was induced to substitute the written agreement for the much more advantageous oral agreement by means of said false and fraudulent representations as to the price the China Company had agreed to pay for the logs. This is made clear by the testimony of Mr. Williamson on pages 6, 7, 8 and 9 of the transcript. Payne came to Zamboanga in the middle of May and the business was talked over in
126 the office of the Port Banga Lumber Company and later at the mill at Port Banga, and here for the first time Mr. Payne proposed that the Plaintiff should enter into a written contract with the Defendant, and the price he had been able to obtain from the people in China was not so much of a price as he had expected and it was only with great difficulty that he had been able to get the price of 55 cents and that others had offered logs at 40 cents; and then he suggested (page 8 of the transcript) as this was the best price he could get it would be a difficult matter to figure up his expense account while in China, a good part of which went for entertaining in order to obtain the contract with the China people, and that we divide this thing up in what would be a fair and proportionate division and instead of doing the business on joint account as we had agreed before he suggested we take as our part 40 cents and that he take as his part 15 cents, making up the 55 cents conant or Philippine Currency, and later at Port Banga in the presence of Mr. Redding the same ground was gone over as in Zamboanga, and in Mr. Redding's presence. And on page 10 of the transcript: "He asked us if we would be willing to set aside the joint account basis on which we had started in doing this business and do it on a fixed price basis, that is, we take 40 cents and he take 15 cents." Mr. Redding corroborates the testimony of Mr. Williamson in regard to the representations as to the price paid by the China Company and the change of the oral agreement or joint account to one of purchase and sale, and the reasons urged by Mr. Payne to induce the Plaintiff to make this change, so Mr. Redding testified.
127 It was not until November or after the greater part of the logs were loaded on the "Hellas" that Mr. Williamson was told by Mr. Seitz, the representative of the China Company, what the true price was that was being paid by the China Company, and that it was P1.80 a cubic foot not 55 cents a cubic foot, as represented by Mr. Payne. The number of cubic feet loaded on the "Hellas" for the China Company amounted to 32032. As soon as the fraud was discovered by Mr. Williamson, he taxed Payne with it and the only reply he got from him was that he stood on the written contract. According to Mr. Williamson, Payne didn't deny that there had been an oral agreement but merely said he stood on the written agreement.

And this brings us to the fourth and last question to be answered. Did the Plaintiff affirm and ratify the written agreement after discovery of the fraud by completing the shipment of logs, or by not returning the P5000 that had been paid by the Defendant to the Plaintiff, and which the books of the Plaintiff show was placed to the credit of the Defendant on its current account for lumber

sold and delivered outside of the China contract? We think not. The Plaintiff elected to go on and complete the shipment, being urged so to do by Mr. Seitz, the representative of the China Company, who claimed that they, the China Company, would suffer heavy damages if they failed to supply the logs to the people in China to whom they had agreed to furnish them, reserving the right to settle the matter so far as the Defendant was concerned in Court, which the plaintiff promptly did by filing this action. This
128 seems to the Court to have been an honorable business way to act on the part of the Plaintiff and for which the Defendant has no reason to complain.

As to the written contract having been affirmed by receiving and not returning the P5000, it must be remembered that at the time that money was placed to the credit of the Plaintiff Company in the International Banking Corporation in Manila, the Defendant was indebted to the Plaintiff for more than P20,000 for lumber previously sold to the Defendant on open account. Even if the P5000 had been applied on the contract for the logs the Court can see no reason why the Plaintiff could not retain it and apply it to the Defendant's indebtedness on its current account. Mr. Selg, the Bookkeeper of the Plaintiff Company exhibited the books in Court and pointed out that the P5000 was placed to the credit of the Defendant's account at once and never has appeared on the Plaintiff's books as a payment on the logs. It is true that Mr. Williamson wrote to the Defendant that it had been credited on the contract for the logs but the most that can be said of this discrepancy is that he made an error in so writing without knowing that it had been entered as a credit of the Defendant's general account.

This brings us to the counterclaim of P17,500 for damages for breach of the written contract. This claim cannot be allowed for two reasons. First: If the Defendant has the right to rely on the written contract he could not recover this amount as damages because by the letter of the Defendant which was intended to form a part of the written contract, and which is marked Plaintiff's
129 Exhibit "C," the Defendant expressly limited the amount of damages to be claimed, to the value of such logs as the Plaintiff might fail to deliver. According to the testimony of Mr. Seitz, the representative of the China Company, the contract was substantially filled so far as the delivery of the logs was concerned. Dep. Seitz, p. 4, answer 22. In the second place, if the written contract was obtained by fraud and the Court so finds from the evidence, and it is annulled on that ground, then the entire written contract falls and the counter-claim based on it must fall with it.

The Court finds the following facts proven by a very great preponderance of evidence: First, that the oral joint account agreement was made as alleged; that the second or written contract Exhibit "B" was procured to be made by the Plaintiff by means of the fraud of the Defendant; that the Plaintiff furnished 32032 cubic feet of logs on the joint account agreement: that the Plaintiffs' expenses in furnishing the logs amounted to P14,422.86; that there is no evidence showing what the expenses of the Defendant were; that the

contract price for the logs to the China Export and Import Lumber Company was P1.80 per cubic foot, or P57,657.60; and that after deducting the sum of P14,422.86 for the expenses of the Plaintiff Company the net profit of the transaction was P43,234.74, one half of which, to wit: P21,617.37 together with P14,422.86, expenses, amounting in all to P36,040.23 is justly due from the Defendant Company to the Plaintiff Company, less P900 which the Plaintiff Company received from the China Company in payment for certain logs shipped.

130 Judgment is therefore rendered in conformity with the foregoing findings of fact and conclusions of law, setting aside the contract, marked Plaintiff's Exhibit "B," as null and void on account of fraud and that the Plaintiff has judgment on the oral joint account agreement for the sum of P35,140.23, with legal interest thereon from the date of commencement of this action, and for the costs.

It is so ordered.

Zamboanga, Moro Province, P. I. January 27th, 1912.

[Seal of Court of First Instance, 14th Judicial District.]

(Sgd.) CHAS. A. LOW,
Judge Court of First Instance,
Fourteenth Judicial District.

Received copy Jan. 29, 1912.
(Sgd.) YEAGER & GIBBENS,
Att'ys for Plaintiff.

131 The defendant company duly excepted to the foregoing decision, announcing at the same time its intention to prepare and present a Bill of Exceptions for the purpose of prosecuting an appeal to the Supreme Court, without prejudice to presenting the following

Motion for a New Trial.

(Heading and Title Omitted.)

"Comes now the defendant company, through its attorneys A. D. Gibbs and Chas. A. McDonough, and respectfully requests the court to annul and set aside the decision rendered by the court in this cause on the 27th day of January, 1912, for the following reasons:

"1. Because there is no evidence supporting the decision of the court.

"2. Because the findings of fact of the court are openly and manifestly against the weight of the evidence.

"3. Because said decision is contrary to law.

"Zamboanga, 31st of January, 1912.

(Signed) A. D. GIBBS,
" CHAS. A. McDONOUGH,
Attorneys for Defendant Company."

Hearing of the foregoing motion for a new trial was duly had on the 12th day of February, 1912, and on the 13th day of February, 1912, the court denied same, to which denial the defendant company duly excepted.

132 All the exhibits and evidence presented by the plaintiff company as well as by the defendant company, together with the exceptions interposed and the resolutions of the court with reference to the same, are referred to in this Bill of Exceptions and form an integral part of the same.

Zamboanga, ——.

(Signed) A. D. GIBBS,
" CHAS. A. McDONOUGH,
Attorneys for Defendant Company.

Presented to me for allowance this 13th day of March, 1912.
(Signed) CHAS. A. LOW, *Judge.*

(Heading and Title Omitted.)

Exception to Judgment.

Comes now the attorneys for the defendant, named in the above entitled cause, and respectfully manifest to this court.

That the defendant hereby excepts to the judgment and order of this court overruling and denying a motion for a new trial herein dated on the 13 day of February, 1912, and does hereby give notice that a bill of exceptions will be prepared and presented to this court, to be allowed by this court on appeal by the defend-

133 ant to the Supreme Court in and for the Philippine Islands.

Zamboanga, February 16, 1912.

(Sgd.) GIBBS & McDONOUGH,
By P. J. MOORE,
Attorneys for the Defendant and Appellant.

Received copy this 16th day of February, 1912.
(S'g'd) YEAGER & GIBBENS,
Attorney for Plaintiff.

Received this 16th day of February, 1912, 3:30 p. m.
(S'g'd) FELIPE FABIAN,
Acting Clerk.

(Heading and Title Omitted.)

The bill of exceptions in the above entitled cause is disallowed on the ground that the same has not been presented for allowance within the time allowed by law to present the same or within any extended term granted to the Defendant by the Judge of this Court or by any stipulation extending the term within which the bill of exceptions might have been presented for allowance to the Judge of this Court. This ruling is made on the authority of Quiros vs. Tan-

Guinlay, No. 5637 in the Supreme Court, and reported in Vol. 9 of the Official Gazette, at page 140. (XVII Philippine Report p. 357.)

134 It is so ordered.

Zamboanga, Moro Province, P. I., March 13th, 1912.

(Signed) CHAS. A. LOW,
Judge Court of First Instance, Fourteenth Judicial District.

Filed by the Hon. Chas. A. Low on the 13th day of March, 1912, at 4:10 p. m.

(Signed) JOSE ESQUIAGA, *Clerk.*

Here follow notice of giving of bond to stay execution and showing to set aside order disapproving bill of exceptions and denying appeal on the ground of mistake and excusable neglect of local attorney of Zamboanga especially employed by regular counsel for defendant to perfect bill of exceptions and appeal, all of which are omitted.

(Heading and Title Omitted.)

This case is before the Court for hearing the motion of defendant to set aside the order of this Court of March 13, 1912, Mr.
135 Chas. A. McDonough appearing for defendant and Mr. Jas. F. Yeager for plaintiff. Said motion is based upon Section 113 of the Code of Civil Procedure, and it appearing to the Court from the affidavits submitted by both parties and from the argument of counsel that the delay in filing the bill of exceptions in this case until after the expiration of the period provided by law was due to mistake, inadvertence and excusable neglect on the part of defendant, of which this Court had no knowledge at the time of entering the order denying the approval of said bill of exceptions, it is

Ordered that the order of this Court of March 13, 1912, be and the same is hereby set aside; the bill of exceptions of defendant is hereby approved and the appeal allowed: it further appearing to the Court that the defendant has furnished a good and sufficient bond in the sum of P45,000.00, the same is hereby approved and the execution heretofore issued is hereby suspended pending the appeal of defendant to the Supreme Court.

Zamboanga, P. I., April 6, 1912.

(S'g'd) CHAS. A. LOW,
[COURT SEAL.] *Judge Court of First Instance, Fourteenth Judicial District.*

Filed by the Hon. Chas. A. Low this 6th day of April, 1912, at 5:05 p. m.

(S'g'd) JOSE MADRAZO,
Deputy Clerk.

136 Here follow exception of plaintiff to approval of bill of exceptions and allowance of appeal, and the proceedings with reference to appeal bond, all of which are omitted.

(Heading and Title Omitted.)

Office of the Clerk.

I, José Madrazo, Deputy Clerk of the Court of First Instance, Fourteenth Judicial District, Zamboanga, certify:

That the foregoing Bill of Exceptions, composed of 113 written sheets, including the last, is the original of the Bill of Exceptions filed by the party appellant in this Court, which is forwarded to the Supreme Court, together with all the evidence and proceedings in this cause, according to the order of the Honorable Judge of this Court.

In witness whereof, I sign the present this 24th day of April, 1912, in Zamboanga, Moro Province.

(S'g'd) JOSE MADRAZO,
Deputy Clerk, Zamboanga.

Supreme Court of the Philippines. Clerk's Office. Filed May 8, 1912, 10:45 a. m. J. E. Blanco, Clerk.

Let it be recorded that on this 16th day of August, 1912,
137 there were sent by registered mail to each one of the attorneys in this cause three (3) copies of this Bill of Exceptions or printed proceedings.

(S'g'd) V. ALBERT,
Clerk, Supreme Court, P. I.
By P. R. ANGELL, *Deputy.*

138 Civil Case No. 275.

PORT BANGA LUMBER CO., Plaintiff,
vs.
EXPORT & IMPORT LUMBER CO., Defendant.

Transcription of Stenographer's Notes, Session of Court August 1, 1911.

The first witness for the Plaintiff Company having been duly sworn, testified as follows:

(Mr. YEAGER, Attorney for the plaintiff company:)

Q. State your name?
A. F. P. Williamson.
Q. Your residence?
A. Zamboanga.
Q. Occupation?
A. Farmer and merchant.

Q. What position do you occupy with the plaintiff, the Port Banga Lumber Co.?

A. I am Vice-President.

Q. Who is the President of that company?

A. Mr. Redding.

139 Q. Do you know Mr. Payne, the President of the Export and Import Lumber Co.?

A. I do.

Q. Where is Mr. Payne now?

A. It is said he is in America, but I do not know of my own knowledge.

Q. How long have you known W. W. Payne, President of the Export & Import Lumber Co., the defendant?

A. Something more than two years, about two years.

Q. Have you had any business transactions with him during those two years?

A. We have.

Q. State whether or not in March or April, 1910. you as Vice-President of the plaintiff company had any dealings or transactions with W. W. Payne, as President of the defendant company, with reference to certain pagatpat logs?

(McDONOUGH:) Objected to as incompetent. First, it is improper under Art. 51, Code of Commerce, 1280 of the Civil Code and 335 of the Code of Civil Procedure. Second, based on the general principle that upon the face of the complaint in issue in this case, that they alleging a written document here in existence between the parties, that all oral negotiations prior to the execution of the written document are merged in the written document. And objected to further as being immaterial at this time.

(COURT:) Objection overruled.

(Exception noted.)

A. Yes.

140 Q. State to the Court what they were?

(McDONOUGH:) Objected to as incompetent and immaterial, and for the reasons stated in the objection to the last question.

It is understood that all questions relating to an oral contract between the parties in litigation in this case, are objected to by the counsel for the defendant, upon the same grounds as those urged to the last question and that the Court overrules said objections, the defendant reserving exceptions.

Q. State to the Court what the transaction was between you, as Vice-President of the plaintiff company and the defendant company?

A. This is a matter which extends from sometime.

(COURT:) An oral contract was made between the two corporations?

(McDONOUGH:) I enter my objections to questions by the Court with reference to an oral contract, upon the same grounds as I stated formerly, objection understood to be overruled and exception noted.

A. When this business first came up in the latter part of 1909 I was in Manila, in December. At that time in an indefinite way, this was discussed. Mr. Payne asked me, if he could get a logging contract in China, of what kind of wood would we prefer to furnish it, and we discussed the different woods and decided on Lumboyo, Guijo or pagatpat and I told him of these woods we would choose either Lumboyo or Pagatpat, very probably, and that if we got out a shipload of logs we would prefer all of one kind; that is, one kind of wood. I then asked him how he proposed to do the business and he said we would do it together.

141 (COURT:) You would do that on joint account?

A. That was the only answer: We would do it together. I was very busy in Manila at this time and I did not give this matter a great deal of thought because it was tentative business only. I then came on home the latter part of December. Came back to Zamboanga.

(YEAGER:) When did you next see Mr. Payne?

A. In February I again went to Manila on other business, also to meet Mr. Payne as I had a telegram saying he was expected about this time. I left here the early part of February. When I reached Manila much to my disappointment Mr. Payne was not there, and Mr. Adams took this matter up with me.

(COURT:) Who is Mr. Adams?

A. The office man. The man in the office. The book-keeper.

Q. He had charge of the office there?

A. Apparently.

(YEAGER:) Did you have any dealings with Mr. Adams with reference to pagatpat logs?

A. Mr. Adams took me driving, he saw I was somewhat nettled.

(McDONOUGH:) Objected to as immaterial in the case.

(COURT:) Objection sustained.

(Exception noted.)

(YEAGER:) When did you next see Mr. Payne?

A. The latter part of March or the first part of April I went up. In March, the latter part of March.

Q. Where did you meet Mr. Payne at that time?

A. In his office.

Q. That is, in the office of the defendant company?

A. Yes.

142 Q. State to the court if you had any dealings with Mr. Payne at that time with reference to these pagatpat logs in question?

A. This question came up again. The Export & Import Lumber Company had had a telegram, they had shown me, asking for logs, pagatpat, of very large dimensions and I wanted these dimensions cut down if possible. I remember very distinctly it asked for 40 logs, 40 feet long, and 40 inches in diameter, according to this telegram.

Q. Who was that telegram from?

A. Said to be from Mr. Payne while he was in China.

Q. Round logs?

A. Round logs; 40 feet long and 40 inches in diameter. I remember that distinctly. 40 logs, 40 feet long, 40 inches in diameter, and we talked over these dimensions in Mr. Payne's office during this time.

Q. Who was with you?

A. Mr. Payne and myself, in his inner office. And we talked them over and he said he had been able to get these dimensions somewhat reduced, not so particularly in diameter as in length, as I told him that it was not so difficult to get plenty of logs 40 inches in diameter but it was difficult to get a log 40 inches in diameter, perfect for 40 feet. That these logs were subject to defects as any other logs that we cut, more or less. We discussed these pagatpat log dimensions and the chances of landing the contract. He said he thought if this contract was filled, if it was possible to land it, if it was filled there were other contracts that would follow, and
143 while these dimensions it was true, were somewhat difficult, that other dimensions of the following contracts would not be so difficult. And I again asked him, "Now", I said, "Mr. Payne, how are you going to do the business"? He said, "Together", just as I said before. And I said, "What do you mean by together"? He said, "Joint account". I said, "All right". We agreed to that.

Q. Did Mr. Payne tell you at that time whether or not he has obtained a contract between the defendant company and the China Export and Import Lumber Company?

A. He said he had not.

Q. Did he mention to you the price which he expected to obtain from the China company?

A. No, he did not.

Q. Did he state to you whether or not he was negotiating with parties in China to obtain this contract?

A. Oh, yes. That is what he made the trip for. That was well understood.

Q. Trip to where?

A. To China. He was just back from China.

(COURT:) Shanghai?

A. Shanghai. He went to Shanghai expressly for this purpose. So I was told by himself.

(YEAGER:) By who?

A. By Mr. Payne himself.

Q. Was there any further discussion between you and Mr. Payne, with reference as to how this contract would be carried out? In other words executed?

A. Most of the discussion after that was, could he pay some money on his joint account. We used considerable and needed money.

144 Q. For what purpose?

A. On the joint account and the business we were doing not under the joint account. Lumber we frequently shipped him, from time to time. We had been doing business with him right along and we wanted some payment.

Q. Then it swung off again into other matters?

A. Yes, exactly into other current matters.

Q. Did you ask him to advance any money on this contract, joint account, with reference to pagatpat logs?

A. Yes, I told him that if we took a contract as big as this we would need some financial assistance. It was too big to carry alone. He said there would be no difficulty about that. These China people were wealthy people and would not hesitate to make any advance necessary.

(COURT:) Dealing with a lumber firm in China?

A. In China.

Q. What was the lumber for?

A. At that time this was kept in the contract. I did not ask any questions. I understood that was his end. I asked no questions whatever as to who it was, although he told me it was for a Chinese Emperor's Tomb.

Q. Was there any further agreement made between you and Mr. Payne at that time?

A. At that time, no.

Q. When did you next see Mr. Payne?

A. Mr. Payne then came down here to Zamboanga. He sent me a telegram saying for me to come to Manila, but if I could not he would come to Zamboanga. I told him he had better come down here and all three would get together.

145 Q. Who do you mean by all three?

A. Mr. Redding, Mr. Payne and myself. That is the letter and the telegram together said that.

Q. When did Mr. Payne arrive in Zamboanga?

A. Along about the middle of May.

Q. Did you have any conversation with him at that time with regard to this pagatpat logs contract?

A. We certainly did.

Q. Where did this conversation take place?

A. In the office of the Port Banga Lumber Co., in the first place.

Q. Who was present at that conversation?

A. Mr. Selg and myself.

Q. And who?

A. And Mr. Payne of course. He carried on the conversation.

Q. State to the court what that conversation was, and what took place between you and Mr. Payne at that time in your office in Zamboanga?

A. We took up the subject of the logs. He said he wanted us to sign a contract. Well, I said, what do you want a contract for, we never signed a contract here with you. You just gave us an order and we carried it out. What do you want a contract of this for? Well, he said, the China people required him to sign one and he thought that we ought to sign one. Well, I said, I did not know about that, and I said, what do you get in your contract? He said, well, we are not getting as much of a price as we thought we were going to get. When this man came down from China, Mr. Seitz, at

that time I did not know him, by the way, but he was the
146 representative from China. That is the way I knew him, as mentioned in the telegram——

(COURT:) Proceed.

—He said he was not able to get so much of a price as he had expected.

Q. Who said that?

A. Mr. Payne, because when the China representative was in Manila the other lumbermen learned about it, and learned that he was in the market for logs suitable for this work. He said it was with very great difficulty for him to be constantly in the presence of this man and keep him from getting away and may be closing with these fellows, and that he had to constantly represent the great value of this wood, and that it was only with great effort that he was able to get a price of 55 cents; that others had offered wood for 40 cents, 40 centavos, Philippine currency.

Q. 55 cents gold, or 55 centavos?

A. Centavos of Philippine currency. I told him I thought that was a rather cheap price. He agreed but said that was the best he could do. He had at that time his contract with him and he put it down on the table in the office. This contract is the one he wanted us to sign. Then he suggested as this was the best price he could get and it would be a difficult matter to figure up his expense account while in China, a good part of which went for entertaining in order to get this contract, that we divide this thing up in what would be a fair and proportionate division and instead of doing the business on a joint account, as we had agreed before, he suggested that we take as our part 40 centavos and that he take as his part 15
147 centavos, making up the 55 centavos. I told him that we had better wait until we went up to the mill to discuss this matter further, so that we all three, Mr. Redding, Mr. Payne and myself might be present.

(COURT:) Mr. Redding being up at the mill?

A. Mr. Redding being up at the mill where he is most of the time, except at short intervals.

(YEAGER:) Did Mr. Payne state to you whether or not he had obtained a contract at that time with the China people?

A. No, he did not say he had it.

(COURT:) He said he had secured 55 centavos?

A. Yes, he stated he had closed with the China people. Yes.

(YEAGER:) Then Mr. Payne stated he had obtained his contract with China?

A. Yes, at 55 centavos with China.

Q. Per cubic foot?

A. Yes, per cubic foot.

Q. 55 centavos, or gold?

A. Centavos, all of this is Philippine currency.

Q. Was anything said between you and Mr. Payne at that time regarding doing this business on joint account?

A. At this time in our office?

Q. Yes.

A. Yes, that instead of doing it on the basis of the joint account as formerly agreed, he suggested that we do it on this basis. I have just covered that point.

Q. Did he give any reason why it would be possible to do it on the basis of 40 centavos to the defendant company and 15 centavos to him?

148 (McDONOUGH:) Objected to as leading.
(YEAGER:) Question withdrawn.

Q. When was the next time you had a conversation with Mr. Payne regarding this subject matter of pagatpat logs?

A. Up at Port Banga.

Q. Who was present at that conversation?

A. Mr. F. W. Redding and——

Q. And who?

A. Mr. F. W. Redding and myself.

Q. At that conversation there were present you, Mr. Payne and Mr. Redding?

A. Yes.

Q. Anybody else?

A. No, that was up in our house on the hill.

Q. At Port Banga?

A. At Port Banga.

Q. State to the court what conversation, what agreement, you and Mr. Redding and Mr. Payne made at that time with reference to this contract of pagatpat logs?

A. We went over the same ground that we had gone over in the office in Zamboanga.

Q. Was there anything said, or agreed, at that time with regard as to how this contract should be carried out between the defendant and plaintiff companies?

(McDONOUGH:) Objected to as leading.
(COURT:) Objection sustained.
(YEAGER:) Exception.

Q. What was said, if anything, and by whom, with reference to the carrying out of this contract between the plaintiff and defendant companies?

149 A. We covered the same ground that I have said before, in Zamboanga. Mr. Payne said that he had closed the business with the China people and that he wanted us to sign a contract which he had there with him, and of which he read certain clauses, and also gave us some details as to the dimensions, and we discussed the difficulty of these dimensions; that the larger logs were somewhat difficult. And he agreed that they were hard to handle. Then we spoke of a price; we asked him about the price, why it was so cheap, and he answered that that was the best price he could get, that not only the Borneo people and the Teak people would try to land this contract——

(COURT:) Borneo people and what people?

A. Teak people, but that the dealers also in Manila had gotten wind of it and owing to this competition this was the best price he could get. Then he asked us if we would be willing to set aside the joint account basis on which we had started in to do this business, and do it on a fixed price basis, that is, we take 40 centavos per cubic foot for our part and allow him 15 centavos per cubic foot for the reason that he had been put to expense in Shanghai, extending over quite a period, for which he had no particular record, and that he had also entertained the China representative in Manila, which was expensive, and that he had no receipts for the money he had spent; that we also, Mr. Redding and myself, would from time to time put certain work here, individual work and time on this particular contract; that the
150 launch would be hauling from time to time; that certain workmen would be working from time to time on it; and that it would be very difficult for him and for us to put in a- expense account to which the other party would not make objections. We took this matter under consideration, Mr. Redding and myself, discussed it pro and con, and finally agreed to let it go at that, although at this time he did not push us to the signing of the contract. He mentioned the signing of it several times but did not insist that we sign it right then.

Q. Is that all?

A. Yes, that is all at the mill.

Q. State whether or not any final agreement or conclusion was entered into between the plaintiff and defendant companies at that time?

(McDONOUGH:) Objected to as calling for a conclusion of law of the witness. The court will determine whether it was——

(YEAGER:) Question withdrawn.

Q. Is that all at this time?

A. During this time we took Mr. Payne and showed him where we proposed to get the logs. I took him out in the mud and led him through a swamp and showed him what trees we were hauling out. We went around the trees and looked them over and tramped up and down in the mud, up to our knees in places, looking the ground over, and showed him where the work was to be done. That is, only some parts of it; we did not get over the whole ground.

Q. Where did Mr. Payne then go?

A. After this was all over he came to Zamboanga.

151 Q. Did you have any further conversation with him at that time in Zamboanga, with reference to that contract?

A. No, except in a general way.

Q. When did you next see Mr. Payne?

A. I got to see him from time to time. We went to Manila together on the steamer.

Q. What time did you arrive in Manila, approximately?

A. The latter part of May or the early part of June, something like that.

Q. Did you have any further conversation with Mr. Payne at that time with reference to pagatpat logs?
A. At Manila?
Q. Yes.
A. Yes.
Q. Where did that take place?
A. In the office of the defendant company.
Q. Who was present at that conversation between you and Mr. Payne?
A. Nobody. Mr. Payne and myself only.
Q. State what took place at that time between you and Mr. Payne?
A. Mr. Payne began to insist that I sign the contract. He said that his contract had been signed sometime now, and that he wanted this signed, and finally I told him I did not think I would sign it, that I did not like some provisions in it. He asked me what provisions they were, and I told him among other things the penalties and that we did not like those penalties clauses. That the danger of the East, of the Philippine Islands. was a man allowing himself to be put in a hurry in the way of filling a con-
152 tract, that he had to go very slow, be thoroughly familiar with the conditions, allow himself plenty of time, and that experience had taught us that it was not safe to be tied down to a specific time, to specific deliveries, and we did not like that clause in there. This clause of the contract——

(McDonough:) I ask that the answer of the witness in regard to the conversation had with reference to the provisions of that contract as to penalties, etc., be stricken out, as being an attempt to vary a written document by oral proof; and further as being immaterial under the issues in this case, the plaintiff having set out by his replies, responses which were made to him.
(Court:) Objection overruled.
(McDonough:) Exception.

A. —He said all right, if you object to those clauses in there, I will give you a letter doing away with those penalties and only hold you for such stuff as you do not deliver. Well, I said, all right then, if you will do that. He did give me a letter. He agreed at that time to give me a letter and after signing the contract did give me a letter to that effect.
Q. Did you at that time sign a contract between the Export and Import Lumber Co. and the Port Banga Lumber Co.
A. Yes.
Q. (Handing to the witness document marked Plaintiff's Exhibit "B" for identification.) State to the Court what that is?

(McDonough:) We admit that that is the contract executed between the Plaintiff and Defendant Companies.

A. Yes, it is.
153 (Yeager:) State whether or not the plaintiff company delivered to the defendant company any pagatpat logs at any time.

A. Yes.
Q. When?
A. In the fall of 1910.
Q. Do you remember the month?
A. I have got my notes all about it. (Referring to notes.) On the Steamship "Hellas" we loaded pagatpat logs.
Q. When?
A. In October and November?
Q. What year?
A. Same year.
Q. 1910?
A. Yes.
Q. What is the name of the steamer?
A. Hellas.
Q. To whom were these pagatpat logs delivered by you, for the plaintiff?
A. They were delivered to the defendant, the Export & Import Lumber Co.
Q. The defendant in this case?
A. Yes.
Q. What was the amount of pagatpat logs delivered to the defendant by the plaintiff at that time?
A. Some 32000 odd feet. Cubic feet.
Q. Do you remember the exact figure?
A. No, I do not, unless I refer to the manifest.
Q. Was it 32032 cubic feet pagatpat logs delivered at that time to the defendant?

(McDonough:) Admitted by the attorney for the defendant to be the true amount delivered at that time.

154 (Yeager:) Did you at any time discover or learn of the true price at which the defendant company sold these pagatpat logs to the China Export and Import Lumber Co.?
A. Yes, I learned about that.
Q. When?
A. During the sickness of Mr. Seitz in the Military Hospital in Zamboanga.
Q. Do you remember when that was?
A. I can tell in a moment. About October the 31st we brought Mr. Seitz down here and he was in the hospital over a week, I guess. I brought him down myself and put him in the hospital and he had Dr. Leary, who is at present in Zamboanga.
(Court:) Brought him down from where?
A. From the loading of the ship. He was present at the loading.
Q. At Port Banga?
A. Above Port Banga. At the Island of Buluan. We loaded up there the last day of October. We traveled all night. It was a very rough and bad night, and Mr. Seitz was in great pain. He was stretched out on the cot on the lawn and at the time we put him on he was in such condition he could not be carried down the companion-way of the ship, but had to be lowered over the

side, by the ship's tackle. We considered him a very sick man, and after he had been put in the hospital, Dr. Leary, I was not present at the operation——

Q. Mr. Williamson, the question was, when did you first learn of this price?

A. Just give me a moment and I will tell you. I used to
155 call on him every chance I had up there. I had little talks with him trying to cheer him up a little. One morning he asked me, after he began to get better; he said what are you getting for these logs? I said 40 centavos, and he laughed and said tell me truly what you are getting. He said that in a jolly sort of way, and said all right I will tell you what I am getting if you will tell me what you are paying. He laughed again, and said he was getting 80 cents gold. He says you are wrong you are not getting 40 centavos, you must be getting 40 cents gold, look at your contract again. I ran right down and looked and it was not 40 cents gold, but it was 40 centavos. I though- may be there might be some error somewhere but there was not.

(YEAGER:) Subsequent to that did you have any further conversation with Mr. Payne relative to this pagatpat contract?

A. Yes.

Q. Where did that conversation take place?

A. At that time the ship had gone to Cotobato and Mr. Seitz and I stayed here in Zamboanga, he in the hospital and myself at the office picking up little odds and ends of business that had been neglected during my absence. Then I went back to manage the ship again, the "Hellas", to where the ship was stowing, to where she had come after finishing at Cotobato, at Buluan, the former loading place. That night after supper I taxed Mr. Payne with this funny business of his——

Q. Was Mr. Payne here then?

A. He followed the ship to Cotobato. The first time they had been separated. Up to this time they had been together all the time. The ship finally came back.

156 Q. Mr. Payne on board?

A. Yes, on board. I took him down in the cabin and had a talk with him, and told him about this conversation with Mr. Seitz, and went over with him the history of that thing, and I said, now Mr. Payne, remember we started out to do this on joint account, that while it is true we signed the contract at your request, you know at the time that when you represented you were only getting 55 centavos, you knew that that was false, you knew that you were inducing me to sign this contract under fraud, that you were misrepresenting, and now I want to give you a chance to do the right thing. Are you going to be a man? He said, I have my written contract and I will stand by it. All right I said, we have only two courses; either a contract with Mr. Seitz direct or to sue you for fraud. This conversation went on for maybe 20 minutes, right on board the "Hellas", down in the cabin.

Q. Is that all that took place at that time?

A. Yes, that is all.

Q. Did you have any further conversation with Mr. Payne along this line?

A. I asked him for payment.

Q. What did he say. After your making demand for payment what did he say?

A. He said he would not consider anything except the contract.

Q. Did he specify what contract?

A. Our written contract.

Q. I hand you herewith document, (marked Plaintiff's Exhibit "C"), and ask you what it is?

A. This is the letter that he promised to give me.

157 Q. Who promised?

A. Mr. Payne promised to give me taking out the penalties provided I signed the contract.

Q. Is that letter signed by Mr. Payne, as President of the Export & Import Lumber Co.?

A. Yes.

(Cross-examination by Mr. McDonough:)

Q. Mr. Williamson, how long have you been in the lumber business?

A. We have been doing some lumbering eight years, more or less.

Q. All of that time in Mindanao?

A. Yes.

Q. And how long have you had a knowledge of pagatpat lumber?

A. I have known pagatpat as long as any man.

Q. And you have been selling that lumber right along, as long as you have been in the business?

A. We have sold this lumber and some logs from time to time.

Q. Well you sell considerable of that lumber, don't you?

A. Pagatpat?

Q. Yes?

A. Quite a little.

Q. And you sell quite a little at a time?

A. Lumber no; logs yes. A number of piles.

(Court:) About eight years, you say?

A. About eight years. That does not mean that the Port Banga Lumber Co. was doing business eight years.

Q. But you mean your personal concern?

A. Yes.

(McDonough:) Now you say the first conversation which
158 you had with Mr. Payne was in the latter part of 1909, where was that conversation had?

A. In regard to this, in Manila.

Q. Who else was present at that conversation?

A. Nobody.

Q. Where was it held.

A. In his office.

Q. At that time was there any contract in existence regarding the selling of logs in China?

A. Any contract in existence?

Q. Yes?

A. No; so far as I know.

Q. At that time Mr. Payne was not away in China with regard to pagatpat logs?

A. I cannot answer. He lived there as I understood. Did business there.

Q. You are unable to state as to whether or not at the time of that conversation he had any negotiations looking toward the sale of pagatpat logs in China?

A. He stated that he had. Not pagatpat logs, but a chance to sell logs but we had not then decided what kind to use.

Q. At that time it was just a general conversation as to what kind of logs?

A. Yes, it started off that way.

Q. Was there anything else came up during the whole conversation other than general conversation?

A. Yes.

Q. State what?

A. In the first place, that is the time the question came up as to how we were to do this business, and I asked how we were
159 to do the business and he said together.

Q. You asked him how to do this business even before you say you had any contract?

A. Yes.

Q. He had nothing in view as to the sale of the logs?

A. I do not say that.

Q. Did you mean to say that you had a contract?

A. He said he expected to sell the logs in China.

Q. But was there any contract that you know, at the time of that conversation, looking to the sale of the logs?

A. No, no contract as far as I knew.

Q. Was there any prospect?

A. That was his end of it. He had lived in Shanghai for years. That was his part to see if we could sell the cargo of logs up there. I said, how are you going to do this business, he said, together. Now you must remember, I did not go to Manila simply for this.

Q. It was just a casual conversation between you and Mr. Payne?

A. Well, I would hardly call it casual, it was a business conversation.

Q. But the conversation just came up by accident, it did not begin with the business?

A. No.

Q. In fact you had no intention of talking with him about pagatpat logs until you went to the office?

A. I did not go specifically for that purpose, no.

Q. And all he said was, that he suggested that you could do this in business?

A. He said it was a good chance to sell a cargo of logs in China.

160 Q. Is it a fact that at that time you and Mr. Payne talked ties?

A. Yes, we probably talked ties. We had a deal on for ties.

Q. And did you go there to induce him to use pagatpat ties instead of the other kind?

A. The suggestion may have been made.

Q. But did he not tell you at that time in conversation that he was expecting to have some lumber from Borneo for those ties?

A. He probably did, yes.

Q. Your remembrance of that conversation is not very clear at the present time?

A. In regard to ties?

Q. Yes?

A. I remember we talked ties, but these specific ties, because we never did much business on ties, I paid no attention to it.

Q. But subsequent to that you had a great deal of correspondance about that conversation?

A. Yes.

Q. And all of that correspondance referred only to pagatpat ties, did it not?

(YEAGER:) Objected to, as the correspondance speaks for itself.
(COURT:) Objection sustained.
(MCDONOUGH:) Exception.

Q. When was it that you had the next conversation with Mr. Payne?

A. The latter part of March or the early part of April.

Q. Where, at that time. What place?

A. In Manila.

161 Q. Now, you were in Manila in February, were you not?

A. Yes.

Q. Now, I believe you said, that at the time of the conversation with Mr. Payne the latter part of March, the question of the reduction of the length of the logs from 40 feet, was taken up?

A. Yes.

Q. And at that time you also asked for financial assistance?

A. I do not quite know what you mean by financial assistance, in the contract or what?

Q. That if you entered into a contract you would require financial assistance?

A. In this contract, yes.

Q. Are you sure that that took place in the latter part of March?

A. I said latter part of March or early part of April.

Q. Might you not have been mistaken and that took place in February?

A. It might not, Mr. Payne was gone until——

Q. Did you not at that time, in conjunction with Mr. Adams, send a cablegram to Mr. Payne in Shanghai, asking for a reduc-

tion from the 40 feet length and suggesting that you would require financial assistance?

A. I suggested this to Mr. Adams and Mr. Adams sent the telegram.

Q. Now, are you positive of the date of the return of Mr. Payne from China?

A. Yes.

Q. That may not have been the latter part of April, or the latter part of March?

A. Yes.

162 Q. At that conversation, who was present?

A. What conversation.

Q. The one that you said was the latter part of March?

A. I have not made any such statement. I said the latter part of March or the early part of April?

Q. Who was present at that conversation?

A. Nobody excepting Mr. Payne and myself.

Q. Just what was said at that conversation.

A. We were discussing the dimensions of the logs, and he was still trying to get them reduced, more if he could than he had been able to get them reduced. As to the question of finances, he said there would be no trouble at all. That this was a wealthy outfit, and would not hesitate to advance money. At any time they would be willing to send down to inspect and give us a fair advance on the logs.

Q. At that time was there any contract in existance for the sale of the logs in China?

A. With whom?

Q. With anybody?

A. In March or April?

Q. At the time of that conversation?

A. No, so far as I know.

Q. Was there any price mentioned at which the logs would be sold, at that time?

A. No.

Q. You people were talking about taking the delivery of logs without mentioning price?

A. I asked him once. He said never mind that is my end of it. If we can get this first contract and get these other contracts, we will all make enough money, you leave that to me. I said

163 all right.

Q. So, at that time, of that conversation, there was no contract in existence and no price talked?

A. No contract.

Q. No contract for the sale of the logs in existence, and no contract had been obtained for the sale of the logs?

A. So far as China was concerned.

Q. You wanted to do something on joint account which was not then in existence, is that it?

A. I have not said so.

Q. Now, the next conversation that you had with Mr. Payne, was that in Manila also, or here in Zamboanga?
A. In Zamboanga.
Q. Who was present at that time?
A. We were in our office in Mr. Selg's presence.
Q. When was that?
A. Sometime in May.
Q. The latter part of May?
A. Yes.
Q. Now, at that time was there a contract in existence for the sale of pagatpat logs with the China people?
A. In existence? There was. I was led to believe so.
Q. And did he have that with him in Zamboanga, at that time?
A. I have no way of knowing.
Q. Did you ask him?
A. I did not.
Q. What took place at that conversation?
A. We discussed the pagatpat logs, how they were to be singled out, the diameters and the way of doing the thing; and he brought up this contract that he had, the same one, laid it down on
164 the table and made this proposition about 55 centavos and the 40 centavos.
Q. Now, you say at that time you spoke of the joint contract, did you?
A. Yes.
Q. And directly following that you had a conversation about placing them in a straight sale of 40 centavos?
A. Yes.
Q. That was before he told you that he had a contract with the people in China?
A. Yes.
Q. Did you agree to it at that time, a straight sale?
A. I did not.
Q. He had the written contract with him at that time, I believe you said?
A. I did not say so.
Q. Did you not say that he had, at the time he came to your office in Zamboanga, a written contract of sale between you and him?
A. Yes, I did, if by that you mean the China contract.
Q. Now you say, that subsequent to that you and Mr. Payne and Mr. Redding had a conversation in which the same matters were talked over as had been talked over in Zamboanga, and as I understand you, at that time you and Mr. Redding and Mr. Payne agreed to the price of 40 centavos per cubic foot?
A. Yes.
Q. At that time the statement was again made by Mr. Payne that the price he had obtained was 55 cents?
A. It was.
Q. But did he at that time state also that he wanted you
165 to sign a contract with him because he had been compelled to sign a contract with the people in China?

A. He did not insist on our signing a contract particularly. He said he would like us to sign it.

Q. But did he not say that he wanted you to sign one because he had been compelled to sign one with the China people?

A. No, I did not say so.

Q. But Mr. Payne said that to you in Zamboanga, did he not?

A. He may have.

Q. Now, why was the contract for the 40 centavos not signed by you at that time?

A. It was not signed for any reason in particular except the question, the main thing was our objection to these penalties and things.

Q. That was the general objection to the signing of the contract, the question of penalties?

A. Yes.

Q. And then you accompanied Mr. Payne to Manila and signed the contract?

A. Yes.

Q. Then the contract, Exhibit "B", was the same one he had with him in Zamboanga?

A. It was. That is, I think it was. I did not put any mark on it but I think it is the same identical one: I made no mark of identification on it but it seems to be the same one.

Q. Now, previous to your signing that contract, had you ever had any negotiations with the Defendant as to the price of pagatpat logs?

(YEAGER:) Objected to as immaterial and irrelevant.

166 (COURT:) Objection overruled.

(YEAGER:) Exception.

A. I may have.

(McDONOUGH:)

Q. I show you a document, (marked Defendant's Exhibit 1 and ask you if you recognize the signature that is attached to it?

A. Yes, it is mine.

Q. Now, as I understand that in your conversation with Mr. Payne, you agreed to furnish pagatpat logs but that you would require financial assistance?

A. Yes, I do not know that it came up every time, but that was so.

Q. Now, what was the financial assistance you were demanding for? Getting out pagatpat logs?

A. Yes, for doing the work. The contract extended over a long period of time and we needed help to do it.

Q. Now, was there ever any agreement between you and the Defendant, that the oral contract which you have testified to here, would be reduced to writing?

A. No, that never became a question. I had perfect confidence in him. We had done business for some time and I thought we were fairly good friends. He would take me around and we would sit

up and talk, out in different places; in that he was all right. I did not see any use in putting this case in writing; we never had with the other business. He sent us orders and we filled them. We never approached him for money but only asked for money when we needed it.

(COURT:) He thought he had found the wood and you thought you had found the market and you proposed to go into this business on joint account, as I understand it. Not that he was
167 to buy the wood from you and sell it on his own account but go into it together?

A. Yes.

Q. Now, at the time you went to Manila and signed this contract, did Mr. Payne at that time state to you that the price he obtained in China for the logs was 55 cents?

A. At this time, this particular time that was not especially brought out during this conversation.

Q. There was no conversation at that time regarding the price?

A. The conversation at this time was particularly about the signing.

Q. Just state at that time whether anything was said about the price at which Mr. Payne was to sell these logs in China?

A. No, we did not go into that.

Q. And you knew at that time that he had a written contract with the people in China?

A. I did not know it. I know he told me he had, but I did not see it.

Q. You say that the first you learned of the real price, the true price, was from Mr. Seitz on the boat coming from Zamboanga?

A. No, I did not say that.

Q. Where was the first place?

Q. In the hospital.

Q. At that time, did you say, the boat was here taking on logs?

A. She was in Cotabato.

Q. With Mr. Seitz on board?

A. No, Mr. Seitz was in the hospital.

Q. At the time of this conversation, there had been loaded on the boat for taking the pagatpat logs, the greater part of the
168 cargo?

A. Yes.

Q. And after Mr. Seitz told you the real price that he was paying for the logs, did you cease to load the boat?

A. No, because the boat was going to Cotabato. Already the boat had left for Cotabato.

Q. But the boat returned to the point where it had left?

A. It did.

Q. And you continued to load?

A. We did.

Q. And at that time you had knowledge that the Defendant was to get P1.80 per foot?

A. We did.

Q. You at that time had acknowledge of the alleged fraud?

A. We had knowledge in so far as what Mr. Seitz said.

Q. And when Mr. Payne returned on that boat, you said you had a conversation with him?

A. Yes, in the cabin.

Q. And accused him of having used fraud?

A. Yes.

Q. And notwithstanding that you continued to complete the cargo of logs?

A. We did.

Q. Had you ever received anything on account of this cargo of logs?

A. We had not. The accounts will show that we had not.

Q. Do you mean to state now, that you had not received a cent from the Defendant Company on the account or in payment of the price stipulated in Exhibit "B"?

169 A. What I mean is this: he promised at the time that he would give us this assistance and immediately on signing the contract with us, would pay us P5,000.00. I wrote him a let-er saying that we had received the deposit. We had received P5,000.00, which we will put on the pagatpat account. He refused to acknowledge it as such and paid no attention to it whatever and has never sent me in any form, or made me a statement that he had sent this money. He simply deposited the money which we took and put to our current account. During this time he owed us about P20,000.00.

Q. Have you ever received as a payment on account of Exhibit "B", the price due you for the pagatpat logs in question, or any part whatever had you received any payment?

A. I have, I think, covered that question.

(McDonough:) I ask that the witness answer "yes", or "no".

(Court:) At that time there was about P20,000.00 then due you?

A. Yes.

Q. Was that P5,000.00 for any specific thing?

A. I tried to tell the Court we were unable to put it on the pagatpat account. He would never acknowledge it, so we simply put it in the books on the current account. We could never get a statement out of him that it was paid on the pagatpat account.

McDonough: Then you mean to imply by your answer, that you have not received from the Defendant Company any payment on the price understood by Exhibit "B"?

A. Yes, that is what I mean to say, except in so far as the amount he has paid has slightly overrun the current account, but in a very small degree.

170 Q. I call your attention to document, (marked Exhibit "2" for the Defendant) and ask you to state if this is your signature?

A. Yes, it is mine.

Q. Now, you spoke of your having a letter, which you said Mr. Payne gave you regarding the penalties of the contract, when was

the letter given to you, before or after Exhibit "B" was executed?

A. Given to me afterwards.

Q. How long after the contract had been executed?

A. I think the following day. It might have been the same day, I am not absolutely sure.

Q. You spoke of having furnished the lumber to the Defendant Company which is mentioned in Exhibit "B", was all of it furnished?

A. Practically and substantially, yes.

Q. Many of the larger pieces were not furnished, were they?

A. Yes, they were furnished.

Q. Do you remember exactly what was furnished, have you a list?

A. If I get the manifest I can tell exactly. (referring to the manifest.) There were 304 pieces put on the ship under contract; there were 15 pieces presumably on board about which there was some discussion as to the checking, whether they were on or whether they were not; there was one piece that was lost, after they hauled it up, it went down; making in all 320 pieces.

Q. Does that give a detail list of the logs with their diameters, etc.?

A. It does.

Q. In speaking about one of these conversations you have
171 mentioned, you said something about the services of Mr. Redding, etc., what did that refer to?

A. In making up an expense account he would probably put so much of his time on it, and I would put so much of my time on it and then do something else. It makes it difficult for the expense account.

Q. When was that conversation in regard to these expenses?

A. That came up almost every time. Just as we had a conversation that question always came up.

Q. Was Mr. Redding present at that conversation?

A. At one time he was, that is, up at the saw mill, at Port Banga, he was.

Q. Was that conversation had previous to the signing of Exhibit "B", the contract between you and the Defendant?

A. Yes.

Q. That was at the time that Mr. Payne had said to you that the contract price with the China people was 55 centavos?

A. Yes, at that time. This conversation took place twice. First in the office in Zamboanga, and later at Buluan in the presence of Mr. Redding, because, as I have said before, I did not care to discuss these things except in his presence, so far as the price was concerned. He understood the prices even better than I did and always when any question of special moment came up we consulted with one another, as to what would be our course of action.

Q. At any of these conversations after Mr. Payne had told you that he had executed a contract with the people in China, did you ask him where that contract was?

A. No, I did not.

Q. Did Mr. Seitz return with you to the place where the
172 "Hellas" was being loaded after he left the hospital?
A. He finally went back, but he did not go with me that first trip.
Q. When they finish the loading, do you remember?
A. Just at present I do not know of my own knowledge, because I was not present at the finish.
Q. Can you tell more or less?
A. Yes, in the latter part of November.
Q. At the time that the boat, the "Hellas," called first to take the logs under the contract, you did not have the entire cargo ready, did you?
A. We practically had it ready, but it was not at the loading place.
Q. And the trip to Cotabato was made because of that fact?
A. No indeed. Not by any means.
Q. And when the boat returned from Cotabato, did you have the balance ready?
A. We certainly did, and at the loading place.
(COURT:) Was this lumber shipped direct to China, or to Manila?
A. Direct to China.
Q. In several shippings?
A. One shipping.
Q. In one shipping?
A. Yes, sir.
Q. Who was it shipped to?
A. Shipped to the man who had charge. He was on board, Mr. Seitz.
173 Q. He belonged to the China firm?
A. He belonged to the China firm. The logs were shipped to Tongku on account of——

(Mr. YEAGER, redirect examination:)

Q. On your cross-examination you stated that after you discovered that the contract price between the Defendant Company and the China Company was P1.80, you continued to load the cargo of pagatpat logs. State why that was done?

(McDONOUGH:) Objected to as immaterial.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

A. We have done everything in our power to get these logs out; to do this thing in a business-like way, and we worked on, determining under no conditions to lay down our hands, and we went on ahead and did our part. We determined to do what we thought was right about it.

(YEAGER:)

Q. What part of the cargo remained unloaded at that time?
A. I should say, approximately, 40 odd logs.
Q. Did you have any conversation with Mr. Payne or Mr. Seitz regarding the completion of your loading the cargo?

(McDONOUGH:) Objected to as being immaterial, as far as Mr. Seitz is concerned.

(YEAGER:) Question withdrawn.

Q. Did you have any conversation with Mr. Payne or Mr. Seitz in Mr. Payne's presence, regarding the completion of the loading of the entire cargo?

(McDONOUGH:) Objected to as immaterial in so far as Mr. Seitz is concerned.

(COURT:) Objection sustained.

174 (YEAGER:) Exception.

Q. Did you have any conversation with Mr. Payne at that time with regard to that subject matter?

A. Continuing loading?

Q. Yes.

A. It never entered my head that we would not continue to load.

(COURT:) At the time that he represented to you that the people in China were paying 55 cents a foot, had anything been done on your part towards getting out the logs?

A. Yes, we had done something in that way. I would not say exactly how much. That work was under Mr. Redding's supervision but I know some preliminary work was done.

Q. That is to say, you had started to get out logs at that early moment?

A. Yes.

Q. And on his part he had gone to China to secure the contract. Done work on his part?

A. Yes.

Q. And the business was under way. The joint account business was under way at the time that he came to you and made this representation to you at 55 cents?

A. Yes.

(McDONOUGH:) How up until Mr. Payne came back and said to you that the contract price was 55 centavos, there had been no communication with him, no correspondence between you and Mr. Payne as to any definite contract upon which the logs were to be furnished, had there? It was all prospective at that time, was it it not?

A. At what time was that.

175 Q. At the time Mr. Payne came to Zamboanga and said to you that the contract price with the people in China was 55 centavos, up to that time you had no knowledge of any definite contract being in existence, had you? It was all prospective, was it not?

A. As far as he was concerned with China?

Q. Yes.

A. He had not signed any contract, that I know of.

(COURT:) The question is this; had the agreement between your two companies been arrived at, to do business on the joint account on this China business?

A. It most certainly had.

(McDONOUGH:) No, my question is: At the time that you had that contract that you have testified about, was there at that time any contract in existence for the sale of any logs at any price?

A. How can I say what he was doing.

Q. So far as you know there was none in existence?

A. I knew of none.

Q. Then on what contract were you working, were you preparing logs for, as you have just testified?

A. At what time in May?

Q. At the time Mr. Payne came here and told you it was 55 cents?

A. We were working on the China business, joint account agreement.

Q. What joint account agreement?

A. The one we had with Mr. Payne.

176 Q. But there was no contract to sell the logs, was there?

A. I have no way of knowing whether they had or not.

Q. And in pursuance to that Mr. Payne had gone to China, and as you claimed afterwards, secured this contract, which he represented to you to be on the basis of 55 centavos, while in truth it was 90 cents, gold, and you on your part had gone ahead down here?

A. We had, yes.

Q. And while going on with this, that is on joint account, he came to you and made you these representations which you afterwards discovered were false, and induced you to make an entirely new and different agreement, in other words, to sell it to him direct at 40 cents, so he could sell it at P1.80.

A. Yes.

Q. When was the first that you got a statement from Mr. Payne, that the contract price was 55 cents with the people in China, when you came to Zamboanga?

A. Yes.

Q. Previous to that you had no knowledge of any contract having been executed between Mr. Payne and the China people?

A. It seems to me I have answered that question three times. I have no way of knowing what contracts he had, or what Payne was doing in China. That was his end of the business, all I knew was what he told me.

Q. And you say that at that time you had started to perform the contract? What contract had you started to perform?

A. I took Mr. Payne up. I'll show you one act. I, myself, in his presence picked many which we decided to be good. I took him up and showed him logs cut from this place; picked out logs

177 that we thought would do.

(COURT:) Do for what?

A. Do for the China work, because he had his measurements with him at that time and we picked out logs.

Q. Measurements for this contract?

A. Yes. He had a telegram, 40 pieces, 40 feet that we had talked and discussed.

(McDONOUGH:) And did you at the time you were getting these logs know of any sizes or diameters that were placed in the contract with the China people?

A. At the time Mr. Payne was down here?

Q. At the time you had partially performed the contract?

A. Payne was with me. We went to measure these logs, to see if they were round, 40 inches, and to see how tall they were. If they were 40 feet long, we took them. We not only went to that place, but went through a swamp to look at other logs.

Q. And had you cut any logs at that time?

A. Yes, by Mr. Redding, this act which would be part of the contract.

Q. I understand your testimony to be that you had partially performed the contract when he made the statement to you that 55 cents was the price to be obtained, that you had partially performed the contract. Am I right in that?

A. Yes.

(COURT:) You did it under that agreement, was it not?

A. Yes.

(McDONOUGH:) What act do you mean in your testimony had been performed by you in pursuance of the oral joint account
178 agreement that you have testified to?

A. That very act of deciding on trees looking them over and seeing the cost, what was there, and if we could do this thing; studying the situation.

Q. And that act was performed by you after Mr. Payne told you that the contract price was 55 cents and that he wanted a straight sale of pagatpat?

A. So far as I was concerned it was.

(YEAGER:) When was the first time you received advises as to the dimensions required to supply the China people?

A. The telegram while I was in Manila.

Q. From whom?

A. Supposed to be from Mr. Payne.

Q. Did you communicate the contents of that telegram or dimensions or diameters required, to Mr. Redding?

A. Yes.

Q. When was that done?

A. When I came back.

Q. When was that, approximately?

A. Sometime in February.

(McDONOUGH:) Now, that telegram that you spoke of, was not to you directly, was it, or Mr. Payne? To whom was it?

A. To his home office.

Q. And they handed it to you?

A. I was in his house with Mr. Adams, and I took it there.

Q. And your reply to that, a copy of your reply to that telegram, is the letter which I show you here, marked Exhibit "I" for the Defendant?

A. I talked with Adams right up there when they received this

telegram. I said Adams, 40 inches is nearly as big as that
179 wagon wheel; I said, that wheel is not much bigger than 40 inches, and I went up to it and measured it. I said, now, that is a big contract but we get pagatpat logs as big as that and I believe we can do it all right but see if you cannot get these dimensions cut down. It is difficult to get them that long and get them perfect.

Q. The logs referred to in your letter of April 29th, marked Exhibit "I" for the Defendant, refer to the same logs for China?

A. Part of that. To say that all of the letter here refers to it, is not true, for this message says from Manila to me, "Send without fail tonight's post firm offer thirty days covering pagatpat logs for China. Cannot get on without firm offer. Will be required for bankers. Shanghai representative is expected to arrive 3 day of May. The business referred to is still open." I am simply quoting this telegram received. This is my letter to them.

Q. That timber is for whom?

A. For the Export and Import Lumber Company and for the China Export and Import Lumber Company. "We received from you yesterday the following cable:" the one I have just read. We received that from Manila. In my letter I go on and say, I have just quoted this telegram. We just received your telegram "It is not clear to us if this relates to pagatpat logs in general or to the special order for which you remained some time in China. For these logs in a general way we do not hesitate to quote your firm offer to stand 30 days for 40c. per cubic foot, logs to run not less than 16″ in diameter and from 12′ to 24 feet long. In regard
180 to *to* the special order we are not familiar with the conditions nor have we the dimensions to hand, besides we thought that you were arranging the price and details and that the business was to be done on joint account." That is the explanation. "We sent you the following cable. Cahoy, Manila," That is their cable code, "We do not quite understand your telegram we thought you were arranging conditions and price, which are not familiar to us. No mail by the time you mention."

Q. Did you ever have any conversation or dealing with the Defendant Company for more than one order of pagatpat logs for China?

A. Yes.

Q. How many?

A. Well, there is no telling. There were all kinds of logs to be sold in China, not always so difficult.

Q. Did you ever receive from the Defendant in this case, through Mr. Payne, in November, 1910, any protest as regards the delivery of this lumber?

A. Yes I received such a letter after this complaint was filed.

Q. I ask you if this is a copy of that letter (showing letter marked Defendant's Exhibit "3" for identification?

A. I think that is a copy, yes.

Q. At the time the first complaint in this case was filed, was it filed at your instigation?

A. Yes.

Q. I note in your complaint that you recite that the representations of the Defendant were made to you on the 10th of June, while in your second complaint you allege that they were made previous to that time, and in your testimony here, will you explain that evident contradiction?

181 A. At the time Mr. Payne came down with me on the launch, after we had had this talk, and without having time to thoroughly look up the data in the matter, I simply went to Mr. Yeager's office, and in his absence to Mr. Gibbens, and consulted with him what was the best thing to do and we went ahead and drew up the first instrument.

Q. To go back to your former testimony as to the oral joint account contract, as I understand it, your testimony is that Mr. Payne was getting the contract of the people in China for the logs, and he was to furnish you with financial assistance to get the logs out. Is that true?

A. Yes, he was to furnish it, or the China people were to furnish it.

Q. And the thing you had to offer was the timber on your concession?

A. Yes.

Q. The first knowledge, as I understand you, that you had of the execution of that contract for the sale of the logs to the China people, was when Mr. Payne came to Zamboanga, the latter part of May, 1910?

A. Yes.

Q. And at the same time that he told you that, he asked that the contract be changed to one of sale?

A. Yes.

(YEAGER:) In answer to a question of the Attorney for the Defendant just now, you said that the only thing you had to offer on this contract was the logs on your concession. Is that all?

A. We had a regularly organized business, fully equipped, launches, two launches. A systematic business, logging and lumbering business.

182 Q. I understand you to say you had that to offer as well as the logs on your concession?

A. Yes.

(MCDONOUGH:) At the time he told you of the contract having been executed with the China people, did he tell you when and where?

A. No.

The next witness for the Plaintiff Company, having been duly sworn, testified as follows:

(YEAGER:) State your name?

A. Max. Selg.

Q. Where do you live?

A. Zamboanga.

Q. What is your occupation?

A. Occupied in the Port Banga Lumber Company.
Q. How old are you?
A. 28.
Q. How long have you been employed by the Port Banga Lumber Company?
A. Since its incorporation.
Q. When was that?
A. First of June, 1908.
Q. You were in the employ of the Port Banga Company during all of the year 1910?
A. Yes, sir.
Q. Up to the present time?
A. Yes.
Q. Do you know W. W. Payne, President of the Export and Import Lumber Company?
183 A. Yes, I have met Mr. Payne several times.
Q. Did you see Mr. Payne In Zamboanga at any time during the year 1910?
A. I did.
Q. When?
A. I saw Mr. Payne here in Zamboanga from May, about May 22nd to the end of June, no, end of May until the beginning of June, 1910, and again in September. September until November. About the 7th or 8th of November.
Q. During May and June where did you see Mr. Payne? What Place in Zamboanga?
A. I saw him in the office and also at the hotel.
Q. What office?
A. The Port Banga Lumber Company's.
Q. Were you present at a conversation between Mr. Payne and Mr. W. W. Williamson, Vice-President of the Port Banga Lumber Company.
A. I was.
Q. Where was that conversation held?
A. At the office of the Port Banga Lumber Co.
Q. When?
A. Latter part of May.
Q. Who was present?
A. Mr. Payne, Mr. Williamson and myself.
Q. What was the subject of the conversation held at that time?

(McDonough:) Attorney for the D-fendant asks that if this calls for evidence as to the oral joint account contract, alleged in the complaint and comes before the complaint, then he ob-
184 jects on the ground that it calls for incompetent testimony, for the reason that the complaint having established a written contract with these parties, all oral agreements as to the same subject matter and between the same parties, prior to the execution of the written document, are merged in the written document; and second an attempt to establish a contract in violation of the provisions of

Section 12480 of the Civil Code, 51 of the Code of Commerce and 335 of the Code of Civil Procedure.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

A. The subject was in the beginning, general business, and afterwards about the logs to be furnished to China.

(YEAGER:)

Q. What kind of logs?

A. Pagatpat logs.

Q. State any detail that you remember of that conversation, all that was said by both parties, Mr. Williamson and Mr. Payne?

A. It started out about the pagatpat logs to be furnished to China, a certain party in China. Mr. Payne had a pile of papers with him, which I did not see but as Mr. Payne expressed it there, it was to be a consum-ation of the contract, also the dimensions, he had them along, they were with the contract, and Mr. Williamson and Mr. Payne kept up the conversation a long time about the dimensions of the logs and about what time it would require to fill the order, and after a certain time Mr. Payne changed the subject as to the joint account agreement. He said, "I did offer to do this business with you on a joint account basis——

185 Q. He said that?

A. Mr. Payne said to Mr. Williamson, he said, "Now, I have spent almost two months up in China, and I entertained the party from China, who came over to Manila, for a quite a time in Manila, and I have gone to severe expense in entertaining the party and", he said, "I did not keep track of all the expenses I had. Now, if I were to put in an expense account after completing the contract, which would amount to quite a large sum, and did not have any vouchers along or receipts for every cent I spent, it might raise some difficulties in the settlement." He said, "I have obtained a contract from the China people. The best price I could get was 55 centavos."

Q. 55 centavos what?

A. Per cubic foot. He said, "Now my idea is this," he said, "if I would take so much and you so much it would be the same as joint account but would do away with that difficult settlment of the expense accounts, and I think this figure will be a good divide, if I take 15 cents and you take 40 cents. 15 cents will cover all my expenses and will leave me a profit on the thing." He made that proposition and Mr. Williamson did not agree right at once, he did not say yes, he did not say no. He said, "See Mr. Redding first". Also on account of there being so many things to be considered and talked over at the mill, he made the proposition that Mr. Payne go up to the mill with him and see Mr. Redding. So far that is all I have heard in the office.

Q. State whether or not Mr. Payne said he had, or had not, obtained a contract for the sale of these logs to parties in China?

186 A. He said he had.

Q. Did he say with whom?

A. No.

Q. State in detail what you remember was said regarding the dimensions of the logs?

A. He had all the dimensions there and the specifications, and the conversation was more or less on account of the measurements, how the logs should be measured, and how the party in China preferred to have the logs measured.

Q. Is that the only conversation that you heard between Mr. Payne and Mr. Williamson regarding these pagatpat logs?

A. That is all I can remember now.

Q. You say you were cashier of the Port Banga Lumber Co.?

A. Yes.

Q. Were you cashier and bookkeeper of that Company during the entire year of 1910?

A. Yes.

Q. Do you remember an item of P5000. credit given by the Export and Import Lumber Co. to the Port Banga Lumber Co.?

A. Yes.

Q. State in detail, explain to the Court, all that you know about that credit of P5000.?

(McDONOUGH:) Objected to as an attempt to contradict the written document signed by the plaintiff Company.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

A. On August 13th it was, we were notified by the International Banking Corporation that the sum of P5000. had been deposited to the credit of the Port Banga Lumber Co. by the Export and Import Lumber Co. of Manila. I asked Mr. Williamson at that time, I said, "Is this going to the pagatpat or is it to be put to the
187 credit of the Export and Import Lumber Co., current account"?

A. He told me pagatpat.

(McDONOUGH:) Objected — as hearsay, as to what Mr. Williamson said to him.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

(COURT:) Was the money put on the written contract or the oral agreement of joint account, do you know?

A. I know a letter was written to Mr. Payne asking if the money should go to pagatpat, to which the Port Banga Lumber Co. did not receive any reply, and I carried that P5,000 to the account of the Export and Import Lumber Co. of Manila. In our records it does not show anywhere that we received any money for that pagatpat.

(YEAGER:) Did you ever receive any instructions or information from the Defendant Company as to what account that money should be placed?

A. No, sir.

Q. Were you ever notified by the Export and Import Lumber Co.

that any money had been deposited to the credit of the Port Banga Lumber Co. on account of the contract?

A. No, sir.

(McDONOUGH:) At the time that this P5,000. was placed to the credit of the Port Banga Lumber Co., state whether or not the Export and Import Lumber Co. was in debt to the Port Banga Lumber Co.?

(YEAGER:) Objected to as immaterial.

(COURT:) Objection overruled.

(YEAGER:) Exception.

188 (COURT:) You wrote the letter in behalf of Mr. Williams' Company to the Export and Import Lumber Co. of Manila, asking them to which account you should apply the money, the P5,000? and you got no answer?

A. No reply to that, so we applied the P5,000, to their current account.

Q. At which time they owed how much?

A. They owed P20,215.51.

Q. At that time you say that the Export and Import Lumber Co. was in debt to the Port Banga Lumber Co. P20,000. odd pesos?

A. Yes.

Q. And they not having instructed as to what account to apply it, you applied it to the current account?

A. Yes, to the current account.

(YEAGER:)

Q. At that time how much did the Export and Import Lumber Co. owe the Port Banga Lumber Co.?

A. P20,215.51.

(McDONOUGH:) Have you a copy of the letter that you wrote to the Export and Import Lumber Co.?

A. Mr. Williams wrote that letter.

Q. The letter that you said that you wrote to the Defendant Company in regard to this P5,000., asking them to what account to put it, is one dated August 26th and is the same as this original letter, is it not (showing Defendant's Exhibit "2")?

A. Yes.

Q. Now that letter was written by Mr. Williamson, was it not?

A. Yes, sir.

Q. Will you kindly show me what part of that letter asks
189 them to what account or what credit the P5,000. should apply?

A. In this letter Mr. Williamson gave them notice that the P5,000. has been deposited, have given credit to pagatpat, and that is all that it says in regard to that P5,000.

(McDONOUGH:) I offer this letter, marked Defendant's Exhibit "2", in evidence.

(YEAGER:) Objected to as incompetent, irrelevant and immaterial.

(COURT:) Objection overruled.
(YEAGER:) Exception.

(McDONOUGH:) Are you acquainted with the signature of Mr. Williamson?
A. Yes, sir.
Q. Will you state whose signature is attached to this letter marked Defendant's Exhibit "4" for identification?
A. The signature of Mr. Williamson.
Q. Now, that letter, it is dated the 21st of July, is it not?
A. Yes.
Q. Now in that letter Mr. Williamson's words to the Defendant Company are in this manner, "In this regard we take the liberty of recalling to your mind your promise that as soon as the contract was signed, you would send us a check for P5,000.00 Does it not?
A. Yes, sir.
Q. Now the letter which you have identified, marked Defendant's 2 Exhibit "1", refers to the same P5,000. does it not?
A. Yes, sir.
Q. Does he ask for it, in this letter of July 21st?
190 A. Yes, but each month we receive payment on account. He didn't state that was on pagatpat.
Q. Does he not state here that they recall to your mind your promise that as soon as the contract was signed——

(YEAGER:): Objected to as being incompetent, irrelevant, and immaterial.
(COURT:) Objection overruled.
(YEAGER:) Exception.

(McDONOUGH:) Now was there any other letter ever written by you to the Defendant Company calling attention to the fact of receiving the P5000. and asking to what credit or what account they wanted it to be credited?
A. No.
Q. So that when you said a few moments ago that you had written a letter to the Defendant Company asking them to what account they wanted the P5000. put, you were mistaken, were you not?
A. I said I had not written a letter. The Company had written a letter, and I understood that letter called for an explanation of the P5000.
Q. When you wrote the letter it was not based on any knowledge of your own?
A. No; no, sir.
Q. Now you have also stated that the amount due your Company from the Defendant Company at that time was P20,215.15?
A. Yes, sir.
Q. Are you sure that was the correct amount?
A. Yes, sir.
Q. Can you account then, that here in the letter marked Exhibit "2" for the Defendant, it states that the balance was P24,141.85?

A. I have a copy of the current account in the book. I
191 took it this morning, but I may have been mistaken.
Q. Where are those books at the present time?
A. At the office.
Q. In the City of Zamboanga?
A. Yes.
Q. Who keeps those books?
A. I do.
Q. Now you stated that your position with the firm was cashier and bookkeeper?
A. Yes, sir.
Q. Have you an interest in the firm also?
A. I have one share.
Q. You state that when Mr. Payne came down here, it was the latter part of May, 1910?
A. Yes, sir.
Q. And at that time he brought with him a number of documents, did he?
A. Yes.
Q. And at that time you said Mr. Williamson thought he had closed the contract with the China people?
A. Yes, sir.
Q. Did he state at that time as to when he had closed it, how long previous he had closed it?
A. No.
Q. Did he give any details of the contract?
A. He gave details in so far as the time of delivery and the specifications of the logs.
Q. Did he read these over in turn or give the average?
A. No, he read it over, the document I saw myself, the specifications.
192 Q. Did he make a statement as to what that document was, as to whether it was the contract with the China people?
A. Yes, sir.
Q. You state "yes, sir", you mean by that that he stated that it was the contract which he had with the China people?
A. It was the specifications he received from the China people.
Q. Under the contract?
A. Under the contract he expected of them.
Q. And he said in conjunction with that at that time, that the price was 55 cents?
A. He said the price we obtained for these logs was 55 cents Philippine currency.
Q. And then he asked Mr. Williamson to make a straight contract of sale of the logs for 40 cents per cubic foot?
A. He didn't ask this right out.
Q. Just what did he say?
A. He said, as I said before, that referring to our old agreement of joint account that it would be difficult to make a satisfactory settlement after the completion of the contract, and he said, "I will prefer if it was so I take 15 cents of the 55 and you 40 cents.

Q. He said he would prefer to have it a straight sale contract?

A. He did not say anything about the sale, he said the settlement of 15 and 40 cents.

Q. But you understood that he wanted to buy the logs straight at 40 cents?

A. I understood that it was just the way they wanted to settle it.

Q. Did you mean, that you thought it was a division of the profits on that basis?

193 A. Yes, I thought it was a division of the profits on that basis.

Q. And did he at that time have a written contract of sale which he asked Mr. Williamson to sign, based on the straight sale at 40 cents per cubic foot?

A. I did not see it.

Q. Did he not mention it in that conversation?

A. I did not hear anything.

Q. Were you present during the conversation?

A. Yes.

Q. At that time did Mr. Williamson object to signing any written contract in regard to the sale?

A. I do not know anything about the contract. The main object of the conversation was the dimensions and time of delivery, and the question of final settlement. About the new contract, I do not — about it.

Q. As you remember the conversation now, was anything said about any new contract wherein the price was made 40 cents and which he wanted Mr. Williamson to sign?

A. I understood it was a settlement, not a contract.

Q. Answer my question, did you understand from that conversation, at any time during that conversation, that there was a written contract which Mr. Payne was seeking to have Mr. Williamson sign, wherein Mr. Williamson, as agent of the plaintiff, would sell these logs, pagatpat logs, mentioned in the contract with the China people, to the Defendant Company at 40 cents per cubic foot? Was there any such conversation took place?

A. I may not remember such.

Q. Your memory is good concerning the conversation that took place there is it?

A. Yes.

194 Q. Do you think it possible for that conversation with regard to the written contract to have taken place without your remembering it?

A. I cannot say.

Q. Do you think it possible that they could have agreed without your remembering it now?

A. There may have been some of the conversation in which I did not catch every word of it because I was just learning English. That is almost more than a year ago since that conversation took place. There may have been several expressions in the conversation which I could not catch as to the meaning of it.

Q. In the whole conversation between Mr. Payne and Mr. Williamson there might have been expressions used which you did not understand in the English language.

A. Yes, sir.

Q. Did Mr. Payne mention as to how much his expenses had been in obtaining the contract?

A. He did not mention a certain sum, he said they were very big.

Q. I understood you to say, that he said in that conversation that the agent of the China people had come to Manila with him.

A. He said he entertained the agent of the China people in Manila. He said he stayed with him all the time.

Q. All of the time, and then did he bring him here?

A. No.

Q. Did he say where he was?

A. Where the agent for the China people was?

Q. Yes?

A. I believe he said he was back in China.

195 Q. Did he say after his first visit to the China people, that he had succeeded in getting him to sign a contract here in Manila?

A. Yes, he said he had a contract with the representative of the China people.

Q. And that was the contract that he brought down here with him, and the specifications?

A. He did not bring the contract, he only brought the specifications.

Q. Did you look at the document to see whether it was or not?

A. I saw six or eight pages in typewriting.

Q. What was in that, the list of the material required.

A. About 7 or 8 pages.

Q. You did not read the document, did you?

A. No, sir.

Q. You did not know what it was?

A. No, sir.

Q. Now did Mr. Williamson agree to 40 cents per cubic foot?

A. Not in the office.

Q. Did he raise any objection to it?

A. He preferred to go up to the saw mill to see Mr. Redding with Mr. Payne before taking any steps in the matter.

Q. Was that the object of the trip, himself and Mr. Payne, after the conversation, was to talk over with Mr. Redding the proposed changing of the contract to 40 cents?

(YEAGER:) Objected to as calling for a conclusion of the witness and as being incompetent.

(COURT:) Objection overruled.

(YEAGER:) Exception.

(COURT:) Do you know what they went there for?

A. They went up there for the China logs. That is all I

196 know.

Q. In connection with the China logs?

A. That is all I know about it.

(McDONOUGH:) But you do know also that Mr. Williamson said he would not agree to the 40 cent proposition until he went to see Mr. Redding, did he not?

A. Yes, sir.

Q. And he asked Mr. Payne to go with him to talk the matter over — Mr. Redding as to the 40 cent proposition?

A. Yes.

Q. And then they left the office to go to the mill to see Mr. Redding?

A. Yes, after two days later.

Q. Now you spoke of the joint account, that they had a conversation about the joint account, just tell me all of what Mr. Payne said with reference to that? I want his words as exact as you can remember?

A. Mr. Payne said that during that joint account he was afraid some difficulties would arise in the settlement on account of his not having kept track of all of his expenses, and that it would also be very difficult for us to keep tract up to a cent. Mr. Redding would put in his time and Mr. Williamson would put in his time and he expressed his opinion that he was afraid that there would be difficulties and some misunderstandings arising in the settlement, therefore, he suggested he would make that proposition to settle the thing this way, 40 cents and 15 cents.

Q. Mr. Williamson replied that he would think it over, did he not?

A. Yes, sir, and go to see Mr. Redding.

(YEAGER:) How long have you been talking English, Mr. Selgs?

A. Since I am in the Philippine Islands, four years.

197 Q. Did you ever receive any instructions of any kind from the Export and Import Lumber Co. as to what account you should apply the P5000.?

A. No. If I remember when Mr. Payne came down here in September, that I told him, I asked him about the P5000. I told him Mr. Williamson had told me to apply it there and there, and I have credited it to your current account. He said, "Well, that does not make any difference, that is all right." And I showed him his account. We had some slight difference between our balance sheet.

McDONOUGH: Objected to on the grounds that the documents are the best evidence.

YEAGER: The books are here in town?

A. Yes, sir.

Q. You can bring them with you?

A. Yes.

Q. State what your conversation was with Mr. Payne, regarding that P5000.?

A. I told him that I put that P5000. on the 13th of August in making my entry. The deposit was made on the 6th of August and it was the 13th or 18th I made the entry and credited to the

current account of the Export and Import Lumber Co. He had a look at his account in our books and he said, "That is all right," it would make no difference.

Q. How long would it take you to go and get those books?

A. A few minutes.

The witness secured the books referred to, and the examination by Mr. Yeager continued.

Q. I will ask you to examine these books and state to the Court what they are, the books that you have there?

A. This is the account current book.

198 Q. Of the Port Banga Lumber Co.?

A. Yes, sir.

Q. Examine that account current with reference to the account of the Export and Import Lumber Co., and state whether or not there appears on there a credit of P5000.?

A. It does.

(McDONOUGH:) Objected to as immaterial.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

199 (YEAGER:)

Q. What is the date of that?

A. August 13th, 1910. The entry was made according to this for the 6th of August 1910.

Q. 1910?

A. 1910. The International Banking Corporation account to the Export and Import Lumber Co. account for deposit on August 6, 1910, P5000.

Q. Does there appear in those books any account of the Export and Import Lumber Co. with reference to the contract for pagatpat logs.

A. No, sir.

Q. Referring to your books again to the time of that P5000. deposit, I will ask you how much the Export and Import Lumber Co. was indebted to the Port Banga Lumber Co.

A. Just prior to the deposit?

Q. Prior to the deposit of P5000.?

(McDONOUGH:) Objected to as immaterial.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

A. P20,215.51. As I said before, the difference where you said about P24,000 comes in the next shipment which was made August 26th to the amount of P3,926.34.

(YEAGER:)

Q. Made by you to whom?

A. Made by the Port Banga Lumber Co. to the Export and Import Lumber Co. They have a credit account of P858.15, to which apply-

ing P5000 to pagatpat, would leave us due P4,141.85, so I entered the P5000 on the current account which leaves the Export and Import Lumber Co. a credit of P858.15.

Q. Then as I understand you the Export and Import Lumber Co. according to your statement, have a credit account with you of P800 odd pesos?

A. Yes, sir.

200 Q. That is after you paid the P5000, into their current account?

A. Yes, sir.

Q. So that they paid you more money than they owed you?

A. Outside of pagatpat.

(McDONOUGH:)

Q. Outside of pagatpat they have paid more money than they owed you?

A. Yes.

Q. Can you tell why?

(YEAGER:) Objected to as calling for a conclusion of the witness.

(COURT:) Objection overruled.

(YEAGER:) Exception.

A. During the time that Mr. Payne was up here with Mr. Seitz in the last of September, he wanted put to his account in Manila a deposit of P10,000 in our interest, in the International Banking Corporation. While they were both up here they sent a cable to Manila, which I forwarded to Manila, instructing Adams to deposit another P10,000. He paid P20,000. P10,000. in September and P10,000. in October.

Q. In addition to this P5000.?

A. In addition to this P5000. That makes P25,000.

Q. At the time that he notified you that his firm, the Defendant firm, owed your firm P24141.85, he immediately paid you P20,000, did he not?

A. No.

Q. Did he not deposit two P10,000 deposits to your account?

A. Not immediately.

Q. Was that all paid before he came down?

A. Yes, sir.

Q. Was that when he came in September and you spoke to him about the P5000.?

A. Yes, sir.

Q. What did he say?

A. He said it was all right. I showed him his account and

201 he said it was all right.

Q. Then at that time you asked him for some money, did you not, in September?

A. Mr. Williamson asked him up there and he sent a notice to me to send a telegram for them.

Q. So that when he saw your books he paid you P20,000.?

A. About one month after.

Q. And your books at that time without the credit of P5000.1 showed that he only owed you P20,000.?

A. About P19,200.

Q. In spite of the fact that he only owed you P19,200 he paid you P20,000.?

A. But at that time he did not know how much he owed.

Q. But you say he saw your books?

A. Yes.

Q. And after he saw that account he paid his P20,000.?

A. Not until after he saw that account, when the loading of the "Hellas" was going on. He said, "I will instruct him to pay you some money."

Q. Does your books show that?

A. Here, October 7th and November 7th my entries are, and the actual deposit was made a little prior to that. On September 29th they made the first one and on October 21st they made the second.

Q. Now, on September 29th the "Hellas" had not arrived?

A. No, sir.

Q. And he paid P10,000. before that boat arrived?

A. Yes.

Q. And he paid the other P10,000. while the boat was here?

A. Yes, on his current account.

Q. So he paid the first P10,000. then after he came to Zamboanga?

A. His attention was called to it many times.

Q. But you specifically called his attention to your book at
202 that time?

A. Yes, sir, I showed him the book?

Q. And the only thing he said was, "All right?"

A. He looked at it and said, "All right."

Q. And have you any other entry in your books on account of the pagatpat logs?

A. That account was kept at the mill by Mr. Redding.

Q. Have you ever seen that account?

A. No.

Q. Then your books do not contain all the business of your firm?

A. Everything we spent on the pagatpat, the pagatpat contract was a part of the general account. I do not know how much food and labor was used on that contract.

Q. So that your books which you have brought into Court here, are not the complete books of your firm?

A. Yes, so far as the expenses are concerned.

Q. Do your books show the expenses of the pagatpat contract?

A. No, the expenses of the pagatpat contract are all kept by Mr. Redding.

Q. They have not been entered in the books which you brought into Court at all?

A. No, sir.

(YEAGER:)

Q. But were the general expense account of the mill and the labor entered in those books the ones which you have in Court, are they itemized?

A. No, sir.

Q. State to the Court in what way you show in these books the labor expenses of the mill.

A. I get my labor expense from the various accounts, one of which is the labor account, another one the launch account, etc., from the expenses on actual labor and on supplies needed to furnish labor, which worked out is charged to the labor expense
203 account.

Q. They charge that to the general balance or itemized account?

A. The ledger expense account is an itemized account. Here are the things of the Export and Import Lumber Co., they are put to the sales account and charged to the current account of the Export and Import Lumber Co.

Q. Now you say you have a ledger account?

A. Yes.

Q. What does it show.

A. It shows only one account for all the accounts of this book.

Q. Then your ledger account includes that for the pagatpat logs for the Export and Import Lumber Co.?

A. I have no ledger account for any individual firm. There is no such thing in my books. All the individual firms are in this book, current account book, and the balance per month of this book goes into the ledger.

Q. From that book?

A. Yes.

Q. Did you not bring that book with you?

A. No, I can get it in the morning.

Q. Referring once more to the current account of the Export and Import Lumber Co., I ask you to state to the Court whether any erasures or alterations appear in that account?

A. No, they do not.

Q. No erasures or alterations of any kind appear in that account?

A. No, I never made any alterations.

The next witness for the Plaintiff Company having been duly sworn testified as follows:

(YEAGER:)

Q. What is your name?

A. F. W. Redding.

Q. You are the President of the Port Banga Lumber Co.?
204 A. I am.

Q. Is your residence in Zamboanga?

A. Port Banga. One or the other. My postoffice address is Zamboanga.

Q. Do you know W. W. Payne, President of the Export and Import Lumber Co.?
A. I do.
Q. How long have you known Mr. Payne?
A. I met Mr. Payne for the first time on his visit to Zamboanga, sometime in 1909. I think it was June or July of 1909.
Q. Did you see Mr. Payne at any time during the year 1910?
A. I did.
Q. Where?
A. At Port Banga.
Q. When?
A. Around the latter part of May. I think the last days of May, 1910. He may have remained at the mill for one or two days in June, I may not be exact in that, it was while he was visiting at the mill.
Q. The mill at Port Banga?
A. The mill at Port Banga.
Q. Who went to Port Banga with Mr. Payne?
A. Mr. Williamson accompanied him.
Q. Did you have any conversation or dealings with Mr. Payne at that time with reference to any pagatpat logs?
A. We had a very important conversation with Mr. Payne.
Q. State to the Court what that was.

(McDONOUGH:) Objected to on the same grounds as the other objections, as calling for incompetent testimony.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

A. Upon coming into the house, almost Mr. Williamson's first words were, "Well, Mr. Payne gets that China Contract",
205 which was something of a disappointment to me, because I was not very anxious to do that work, knowing the burden would fall upon myself, and from that the conversation ensued. After some little talk about the dimensions, Mr. Payne saying we could do it if we could get these big diameters, and some little talk about the difficulty of the work and whether we thought that we could get all the big 40 foot and 40 inch diameter logs that was part of the contract, a little more talk like that, and then Mr. Williamson said, I think it was, "Mr. Payne wants to have us take this on a straight sale, he wants us to take this as a contract at about 40 cents." Mr. Payne then took up the burden of the talk, and says, "I can only get 55 cents from the China people for these logs, and I think it would be better if we didn't do it on the joint account as we had agreed before, owing to the difficulties of settlement at the end of the contract. I have spent considerable time in China, as you know, working up this contract," he said to me, "I stayed there two months or over working on this and I spent considerable money while there, how much I do not know exactly, I have no record of it; and also when the China agent was in Manila I entertained him quite a great deal, put out considerable money in automobile rides, and suppers, and such like, and if at the end when this thing is com-

pleted and you people get these logs, and when we come to a settlement if I put in a couple of thousand dollars as an expense fund, you will think I am trying to do you." I think those were his words, "do you." Sometime during this conversation I broke in on him and said, "Payne, could you do better than 55 cents on that contract that you have been holding out to Williamson as giving promise of such big results." "No," he said, "It is the best I could do, because there were other timber dealers in Manila who were
206 laying for him and I had to close when I could at 55, thinking I was doing fairly well." Well this talk went on and I was disappointed of course at this 55 cents per, because from what Mr. Williamson had told me of his talk with Mr. Payne, I expected that this would be quite——

(McDonough:) Objected to as to what Mr. Williamson told him as being a conclusion of the witness.

(Court:) Objection sustained.

(Yeager:) Exception.

A.—I was disappointed at the small sum received, and then he went on to state about this 55 cents price, he thought if we would agree to take a straightout price of 40 cents, and inasmuch as the price to be received was 55 cents, it would leave him 15 cents profit, and he thought 40 cents would be fair to us. At that time he said, "You could get it out for about 25 cents, couldn't you?" I said, "Well, yes, it is possible to do it, possibly we can."

Q. You said that?

A. I said, "Yes, we can although the dimensions are very big and it is difficult to get them, we possibly can." I though over the matter and concluded his reasoning was all right and would amount to about the same.

(Court:)

Q. On the basis of 55 cents?

A. On 55 cents I figured we could do the contract for about 25 cents owing to the scarcity of these immense dimensions pagatpat logs, but I knew that we could get ordinary logs.

Q. You would be making 15 cents on that?

A. We could get out a little profit, and the 15 cents would be his profit and our profit. Then without absolutely committing ourselves that night, without absolutely committing ourselves in that conversation, as I remember it, to Mr. Payne, during the next day or two Mr. Williamson and I talked about it together and,
207 well, we concluded we would take it up on that, and I told Mr. Payne it looked as though it amounted to about the same thing, an equal division. I think it was, in fact I know it was, while he was still there at the mill that we practically concluded to do it on that basis.

Q. Do you remember any more of the conversation, Mr. Redding?

A. Well, I remember he also spoke as one further reason for our dropping the joint account, as owing to the difficulty of settlement,

that we also would have difficulties. He referred in that to keeping our expenses that pertained to these pagatpat logs separate, because we were running a sawmill and there would be some little difficulty to keep the expenses that pertained particularly to the pagatpat logs separate from the rest of our general lumber business, and there might be some, and probably would be some feeling at the settlement. In fact his presentation of the case appealed to me, after I got accustomed to that 55 cent price, it looked to me as though there would arise difficulties, possibly, and in as much as it made practically no difference because that 15 cents to him and the 15 cents to us was practically the joint account affair any way. It appealed to me that way and I consented to it.

Q. Do I understand that agreement was made at that time between your company and Mr. Payne's Company to accept that contract.

A. Yes, during his stay there.

(COURT:)

Q. Then had he said to you, "I made a contract for P1.80 and now we will do this. You sell them to me straight for 90 cents, that will be one-half of the contract price, you will not have to keep any accounts and I do not have to keep any accounts. If he had said to you, "I am selling these on a contract of P1.80, now just change the terms of that and you just fill them at 90 cents,"
208 that would have been all right, would it not?

A. I would not have consented to that, because it would not have been equal to that joint account because our expenses would still have been considerable.

Q. Now with the same proportion as 40 and 15 cents, in regard to the P1.80, it would have been all right?

A. It would be satisfactory, or if he had said to me, "your expenses will you agree to P2000.", in view of the sum he was getting, I would have agreed to that.

Q. You were at the mill when these logs were being loaded on the steamship "Hellas"?

A. Only a small lot of logs were loaded at the mill, I think five logs. The greater part were loaded at the Island of Buluan, a distance of about 18 miles above the mill.

Q. You were present when the logs were loaded?

A. I was not present all of the time, inasmuch as I was working with the launch a portion of the time bringing in logs from the mangrove swamp to apply on the contract.

Q. When did you first learn of the price that the Defendant Company was receiving from the China Company for these same logs? The true price?

A. When did I?

Q. Yes.

A. I learned it in November, about the 3rd or 4th of November at Port Banga.

Q. In November?

A. In November, so informed by Mr. Williamson.

Q. Who was in charge of the actual work of getting out these logs to fill the contract?

A. I may state that I was.

209 Q. Who was in charge of the laborers during that time?

A. Well, I had a head foreman who was at the head of these laborers up to the latter part of September, who had practically full charge of the work; but after that period I, myself, went up on the work and I remained on it practically until it was finished and the logs loaded on the "Hellas".

(YEAGER:)

Q. Can you state of your own knowledge what the cost and expenses were, that were incurred by the Port Banga Lumber Co. in supplying these pagatpat logs?

(McDONOUGH:) Objected to as immaterial, incompetent, and irrelevant.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

A. I can with reference to some notes which I have taken.

At this point the Court took recess until 8 o'clock A. M., August 2nd, 1911, at which time Mr. F. W. REDDING again took the stand for the Plaintiff Company, and testified as follows:

(YEAGER:)

Q. Referring to your notes, state if you can, the exact cost and expense incurred by the Port Banga Lumber Co., in supplying these pagatpat logs in question?

A. The exact sum, which was computable and ascertainable, outside of losses, direct and indirect, which could not be computed, the sum amounted to P14,392.91. This includes losses sustained by the Company in being compelled to suspend this business at the sawmill for a period of five weeks on account of a lack of labor to continue that work, all of the Company's employees being used upon this one work.

Q. Do you count any extra charges?

A. I have made no extra charges, because that was not only loss of business on that work but also loss which cannot be com-

210 puted, such as our customers, we failing to deliver lumber to people in Manila and Cebu, with whom we had dealings, losses of that description which cannot very well be computed, not definite losses, but the mill actually was shut down on account of lack of labor, the labor being employed on this pagatpat contract, for a period of five weeks, the employees of the mill for the greater part being employed in the loading of the logs at Buluan Island.

Q. Mr. Redding, I note in Plaintiff's Exhibit attached to the petition in this case, a list of costs and expenses incurred by the Export and Import Lumber Co., which are placed at P14422.86, and the list of the costs and expenses given by you are P29.95 less than that amount. State briefly how that happens?

A. In going over my notes of expenditures, such items as were divided off into itemized wages paid the launch "Mollie B", the launch "Sketch", the loss of three *lanchons* on the work——

(McDONOUGH:) Objected to as immaterial, incompetent and irrelevant.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

A. —and the salary of Mr. Williamson and myself, divided off into these different branches of the work. Now, I gave to Mr. Yeager these notes of mine which were taken off of the original books of the expenses kept at the mill under my supervision, and in going over these accounts last evening and summing them up, I noticed two mistakes, one in multiplication and one in computing the time employed by myself, Redding, and Mr. Williamson, in gold, and thereafter failing to reduce that to Philippine currency, which amounted to quite a difference. Therefore these two mistakes, the launch account as computed in Mr. Yeager's office amounted to P3400., due to an error in multiplication, whereas the true sum was P2620., and in the case of my salary the time employed on
211 the work for a period of nearly two months, amounted to $570., gold, that was added up with the Philippine Currency as Philippine currency; reduced to Philippine Currency makes P1140., and the same with Mr. Williamson's, instead of being P180., gold, reduced to Philippine Currency it would be P360.; the mistake being made in placing gold sums, adding gold sums to Philippine currency sums, which accounts for the difference in the sum given by me and that placed in the amended complaint.

(McDONOUGH:)

Q. Mr. Redding, how long have you been in the lumber business?

A. Well the lumber business, I should say—I think we did our first business in lumbering in 1903.

Q. And during that time, up to the present, have you been well acquainted with pagatpat logs or lumber?

A. Fairly well. Not during all of that period but the last four or five years.

Q. What has been your experience with that, with pagatpat?

A. Well, I think about the same experience with pagatpat as with the other woods we handled.

Q. You consider that you have a good knowledge of that kind of lumber?

A. Yes, I consider I have a fair knowledge.

Q. And you did have in the month of May, 1910?

A. Yes.

Q. And the Month of June, 1910?

A. Yes.

Q. Have you any other business other than lumber? In other words you personally are an attorney-at-law, are you not

A. I have practised law. Yes, I am a member of the Philippine Bar, but I have not practiced for a period of years.

Q. But you are an attorney-at-law in the Phillippine Islands?

A. Yes.

212 Q. Now, you have never had any knowledge direct from the Defendants of any oral joint account contract until that conversation which you have related in the month of May, 1910?

A. From the Defendant Mr. Payne, no. Not until he referred to it in my house at Port Banga.

Q. Did you have any knowledge or communication regarding this contract from the Defendant Company through any other of its officers than Mr. Pavne, prior to this visit which you speak of in the month of May, 1910?

A. To my own knowledge, no.

Q. You say when Mr. Payne and Mr. Williamson arrived at the mill, conversation was had about the joint account contract, is that true?

A. About that, yes in connection with this new proposition which I have testified upon.

Q. How did that conversation come about? How did it start?

A. Well, as I said upon my direct-examination, the first word was by Mr. Williamson, who announced that this contract, I knew very well what he referred to, the China Contract, had been obtained by Mr. Payne, because it was the contract that had been pending, so I had knowledge of it through Mr. Williamson for three months or more.

Q. It was a contract that according to your idea of it, was in anticipation for some time previous to that visit, was it?

A. My understanding was that Mr. Payne was attempting to get this contract, was working on it during this period.

Q. That is during all of that time that you knew of the contract through Mr. Williamson, there was really no contract in existence for the pagatpat logs, but Mr. Payne was working to get a contract for the logs?

A. There was no contract in existence.

213 Q. Yes, but he was working to get a contract to make a sale of these logs in China?

A. Yes, that is my understanding.

Q. At this visit in May, Mr. Williamson then announced to you that Payne had succeeded in getting the contract?

A. In his presence, yes.

Q. But he announced that to you?

A. Yes.

Q. Did Mr. Payne say anything at that time?

A. He certainly did.

Q. Will you give me his exact words?

A. I cannot give his exact words. I can give the general import.

Q. My meaning is, as near as you can remember?

A. After Mr. Williamson made that announcement Mr. Payne then took up the conversation and went on to say that he had obtained the contract and that all he could get for it was 55 cents, that was the best he could do. This conversation, understand, was broken up more or less by my breaking into it with my questions

at different times, as when I expressed my conviction that we could not do the work and then branched off about the other dealers being anxious to sell their part. Such conversation as that on the part of Mr. Payne was brought out by my talk with him or my questioning him.

Q. Is that all?

A. No, and then he went on to say, to speak about how he wanted to do the business different. He says now we will—my idea is in not continuing our joint account, doing it on the joint account as we had agreed upon formerly, (or words to that effect, I cannot say those were the exact words, but words similar to them), I think it would be better for us to do it on a straight sale basis in as much as I am—as the sale price is 55 cents. I think you people can do it for 40 cents a cubic foot, and I take the balance, 15 cents, as my portion. "I believe you can get them out at an expense of
214 25 cents a cubic foot, can't you?" he asked, and I said, "possibly, while necessitating big diameters, and they are very, very hard to find, Payne, because I have had men out hunting for these for the last month or so, in various parts of the mangrove swamp, and from their conversation and their reports I am not at all certain about getting all of these biggest diameter logs, but outside of these biggest logs, well I think 25 cents may cover it." Then he went on to say, he said, "You know I have been away in China for a long time working on that contract and I have had big expenses there during that period." Well I do not remember if he named Mr. Seitz by name or not, or simply called him the China representative of the Export and Import Lumber Co. of China, but he said, "While I was in Manila I spent considerable sums entertaining him; I had to stay with him practically all of the time to keep him from the other dealers, and I have no receipts of vouchers that I can show when we come to settle on our joint account. When we did, at that way, I would have to put in a sum of P2000 or P3000, and you might think it was strange and that I was putting in a larger sum than I had a right to." He mentioned all of his reasons, why we should do it on a fixed basis. He went on to say, "You people will also have difficulties in keeping your expense account on these pagatpat logs exact and apart from your other work and you will find it that way, and now if we do it on a fixed sale account, you taking 40 cents and I 15 cents, which is a fair division, it will amount practically to the same thing, because you can do this at an expense of 25 cents a cubic foot, and that leaves you 15 cents profit, the same as I get, and that means practically the same thing and there is no question at the end of the contract and no hurt feelings over the amount with regard to expense." I think that is all in
215 that conversation. It was not said all in one breath by Mr. Payne or as quickly as I have said it, for that had been practically a conversation extending from right after supper, I believe shortly before, until the night, practically until bed time. In that conversation we mentioned the difficulties of getting out the logs, figured on the diameters, figuring on the measurements, because that being one very important part of the contract, we were very anxious

to see what kind of measurements this man in China had exacted, the measuring of the logs being my part of the contract.

Q. Now the reasons which you gave, that you have recited, about the difficulty of keeping the accounts, etc., you believe that would be true; that it would be difficult to keep the accounts, is that so?

A. As it turned out it was not on our part.

A. I am asking if at that time you did not believe it would be?

A. I did believe it would be rather difficult. It might be that way.

Q. And you say that at that time Mr. Williamson said Mr. Payne had secured the contract?

A. That is the first announcement that was made, which was of course repeated by Mr. Payne afterwards in the course of the conversation.

Q. Mr. Payne said, "Yes", he had secured the contract?

A. In the after talk that came up, in his talk it was brought out.

Q. Now, previous to that visit to your mill by Mr. Payne, you had no knowledge of the diameters which would be required under the anticipated contract?

A. Yes, I had.

Q. What had you?

A. Mr. Williamson, when he came from Manila in his February visit there, brought with him the first news, you might say, of the diameters of this anticipated China contract, what it would contain.

216 Q. What were they?

A. Well, there were a number of logs 40 inches in diameter, quite a number.

Q. Is it not a fact, Mr. Redding, that there was no number of logs given, but a diameter of 40 inches, given?

A. No, while my memory is not exact on that point, there was a number given. It was either—it was in round numbers; the amount of logs approximately. It was not definite, it was approximate.

Q. You are unable to state now what that was?

A. Not at that time but from the subsequent study of the list, I can approximate what it was.

Q. I am referring to the time previous to Mr. Payne's visit to your place. Did you have any knowledge of the number of logs required or the diameter of the various logs that would be required in the contract?

A. Only as regards—in February?

Q. Yes.

A. Only as regards those immense diameters, the 40 inch diameters.

Q. You had any other dimensions given you except 40 inches in diameter?

A. 40 inches in diameter. I believe it was in round numbers, given us, in the neighborhood of 45 logs.

Q. Now, is not that statement of yours based rather on the subsequent knowledge of the contract than on any memory of what you knew at the time?

A. I will not say that that is a fact. It may be subsequent. I may have that thing in my mind.

Q. You say Mr. Payne said, "Yes, I have the contract. I have succeeded in getting the contract." Did he say anything further about the contract which he had obtained?

A. Yes he did.

217 Q. Just what did he say about the China Contract?

A. He practically told us the contents of the contract, with regard to the price, with regard to the manner of measuring the logs to ascertain the cubical contents upon which the price was based, with regard to the delivery, the period, with regard to the penalties in the event of non-completion of the contract or not completing it within the period designated, and practically he recited to us what was in that contract, because upon that contract he desired us to sign a contract carrying similar conditions.

Q. In other words he notified you and Mr. Williamson that he had the contract, which you people had been anticipating with the China people, and then he asked to make a straight sale of the logs which you expect would be in the contract of the China people, is that it?

A. Practically, after his preliminary talk as to his reasons why we should——

Q. And then you say he also stated in that conversation that the oral joint account contract—that he also made reference to the oral joint account contract—that is, Mr. Payne made reference to it in his conversation?

A. In the talk which took place with me, he undoubtedly did, not once *by* several times.

Q. But with reference to the first contract, just what did he say when he spoke of the joint account contract, how did he refer to it?

A. Have I not testified as to that?

Q. I would like as near as you remember it now, his words when he referred to that joint account contract?

A. His exact words I cannot give but he spoke on the joint account, in reference to that, he giving his reasons why we should abolish that and take it on a fixed sale, several times in that conversation, numerous times in his arguments with us, why it would be

218 best. His exact words I cannot repeat.

Q. Do you know whether or not there had ever been any previous conversations or negotiations between your firm and the Defendant firm as to forming a partnership in general?

A. There had been some talk, rather indefinite, of a combination.

Q. About when was that?

A. That was as I remember, that was not very long after we first began doing business with Mr. Payne. I should say taking a "snap judgment" as to it, I should say the latter part of 1909, I should say it was.

Q. But nothing ever came of these negotiations, did it?

A. Nothing ever materialized, no.

Q. Do you mean by that, combining your two firms?

A. A combination whereby there would be a re-organization. There was some talk.

Q. Of making one corporation?

A. There was some talk.

Q. In other words that you people would handle this end of the proposition and the Defendant Company would handle the sale of the lumber. is that it?

A. Yes, that was talked, it never came to a definite contract but it was talked of.

Q. Now, when he spoke of the 40 cent basis, did you agree to it?

A. The agreement was arrived at by a series of arguments. When he made his talk and gave his reasons, I said, "That's all right, Payne. that sounds all right. That looks as though it amounts to about the same thing." I said "Payne, that sounds all right to me, it looks as if at that price it practically amounts to the same thing, that looks all right." During the evening of the discussion of
219 this thing, in that manner the agreement was arrived at, without any formal offer and acceptance; absolutely nothing of that kind.

Q. You arrived at that after talking over and considering what it would cost to get the pagatpat logs out, did you not?

A. Well, I knew fairly well what it would cost to get out ordinary sized pagatpat logs. That was more or less in my mind when I answered his question.

Q. So that evening when 40 cents was mentioned per cubic foot for pagatpat logs, the price struck you as being all right?

A. Not for these big logs, as I specifically stated to him before. In fact as I said, "that sounds all right, Payne", but then I went on to speak of these big logs. I did not know what kind of success we would have in these big logs because they are very scarce, but we might be able to get these big logs.

Q. At that time you had no knowledge as to whether or not you could get the big logs?

A. Not definite knowledge as to being able to get them all, we certainly had not, but previous to that I had had a man in the swamp for more than a month looking at the diameter and length of logs that would reach this, 40 inches in diameter.

Q. Now, as I understand you, it was after you considered over the whole proposition and talked with Mr. Payne and after knowing the specifications you decided that if he got 55 cents, 40 cents was a fair price for you?

A. Upon a basis of 55 cents, yes I considered it was a fair division.

Q. You considered that 40 cents a cubic foot to you was a fair division, he getting 55 cents?

A. He being able to get it out at 55 cents, and I to get it out at 25 cents, then 40 cents would be a fair division of price.

Q. At that time, speaking of this conversation, you did believe 40 cents was a fair price, at the time of this conversation?

(YEAGER:) Objected to.

(MCDONOUGH:) Question withdrawn.

220 Q. Was there anything said about reducing the contract at that time?

A. Yes, Payne spoke of it but not in an insistent way. He spoke as though he would like it reduced to writing and the other conversations that ensued were more or less about that. I know for my part I fought shy of being pinned down to a contract in writing, as from my point of view it did not look fair that we should assume all of the risks of that contract, in other words why should he impose upon us all of the risk? He wanted to fix all the risks upon us, and we having to do all the work, it did not seem fair to me and I told Mr. Williamson I did not want to contract all of those risks.

Q. Did not Mr. Payne put forth as one of his reasons for wanting you to sign the contract with him for the sale of the logs directly to him, that he had signed a contract with the China people under those same conditions and he wanted you to be bound to him under the same conditions?

A. He may have said that although I do not remember that he absolutely did. That may have come up in the conversation but I am not positive.

Q. When Mr. Williamson came down to the mill, did he tell you that the purpose of his visit was to talk over with you the signing of the contract with Payne?

A. He never made any such specific announcement to that effect.

Q. Did he ever tell you during all of the time that he was there, that Payne had the written contract with him, that he had asked him to sign it, and he had said "Let's talk with Redding first?

A. Yes.

Q. For the direct sale to Payne of the lumber and logs at 40 cents per cubic foot?

A. No, he never did.

221 Q. Williamson never told you that?

A. No, Mr. Williamson never made that announcement to me.

Q. But there was a conversation had between you and Mr. Payne and Mr. Williamson at the mill, wherein the question of the signing of the written contract for the sale of these logs to the Defendant Company came up?

A. The making of the contract, the going into it. I do not remember the signing part of it. The making of it, the going into a contract upon which these contracts would be imposed upon us.

Q. But you are sure he did not say, we have here a written contract which Mr. Payne has prepared, for the sale of these logs to the Defendant Company in this case which Mr. Payne wants us to sign?

A. No such words. Nothing that I recall.

Q. Was the substance of these words in the conversation?

A. No, not in direct reference, specifically regarding the *the* signing of that contract there at that time. I have no recollection of there being made.

Q. Is it not a fact that in that conversation it was agreed between you that the contract would be made but that you objected to the

penalties and that Mr. Williamson would go back to Manila with Mr. Payne and then sign it?

A. The question of signing it was absolutely in abeyance when Mr. Payne left for Manila. The main part of our contract, our agreement, was for the fixed sum of 40 cents, and as I told of the conversation at that time, that was well understood. but the fact of our pledging ourselves under the contract, with regard to the penalties, we did not signify our acceptance to that. That was the contract, carrying those conditions, which was signed afterwards by Mr. Williamson in Manila.

Q. What was the object of Mr. Williamson's visit to Manila?

A. Well, many other things. Mr. Williamson had to go to Manila at that time I think for other business, I think he had.

222 Q. You do not know?

A. I cannot recall now because it was business concerning the financial end of the business, which is not my part of the duties, which I know of only, practically, through information given me by Mr. Williamson.

Q. But you knew from that visit of Mr. Payne's and the conversation at the mill, that Mr. Williamson would accompany Mr. Payne back to Manila?

A. Yes.

Q. But you did not know what the object was?

A. No, not that it was any specific business.

Q. But you did know that there was still a question of the penalties to be placed in the contract for the sale of these logs to the Defendant Company?

A. With regard to the penalties, that was in abeyance.

Q. Now, you stated that Mr. Payne said to you and to Mr. Williamson, that he had spent large sums of money entertaining the agent of the China people, both in China and in Manila?

A. No, I spoke of entertaining him in Manila, but not in China.

Q. But you did know that Mr. Payne was in China?

A. I knew by reference.

Q. And you did know that the agent of the China Company was in Manila and in Zamboanga?

A. Yes, and in Zamboanga. I know personally that he was in Zamboanga, and I know from Mr. Payne that he was in Manila, and also Mr. Seitz.

Q. But you do not know whether or not Mr. Payne spent the money which he said he did?

A. No, I do not know, but I can repeat the conversation.

Q. Do you know whether or not any other timber dealers were seeking to get the agent of the China people to deal with them in Manila, while he was there?

A. I certainly have no such knowledge.

223 Q. You do not know whether that statement was false or true?

A. I do not know.

Q. You do not know whether or not Mr. Cadwallader attempted

there to talk with the agent of the China people for logs delivered at 40 cents conant, per cubic foot, do you?

A. My own personal knowledge, no, but Mr. Seitz told me it was so.

Q. But you do not know yourself?

A. My own knowledge, I do not know.

Q. So that from your testimony, the only statement made by Mr. Payne, which you know to be false, as testified to by you, is the statement that he was getting 55 cents per cublic foot from the China people for the logs?

(YEAGER:) Objected to as incompetent and argumentive.
(COURT:) Objection overruled.
(YEAGER:) Exception.

A. Of my own knowledge, yes.

Q. Mr. Redding, you have spoken of your firm, and as I understand you to mean the Plaintiff Company in the case, now they are in the logging business.

A. Yes.

Q. They have a plant?

A. They have a saw mill plant.

Q. And they have had it for how long?

A. They have had that plant in operation—they have had the saw mill plant in operation since 1907.

Q. And at the time the contract was entered into they had that plant which they had had previous to that time, since 1907?

A. The plant that they had in 1910 was a different plant and in a different situation, from that they had 1907.

Q. But when was the plant which they had in 1910 gotten, when did they acquire that?

A. They established that in the latter part of 1908.

224 Q. And it was the same plant which they had used in filling all orders in all the other business of logging and lumbering?

A. You can call it the same plant. The machinery had been changed some and we had changed the location of the mill, but it was practically the same plant.

Q. Did you have more than one saw mill plant?

A. Never.

(COURT:)

Q. Would your Company have entertained a proposition of the Defendant Company to change the agreement to fill the order for the timber to ship to China from one of joint account to a contract of purchase and sale, had you known that the China contract had been obtained for a larger sum than 55 cents per foot?

A. We would not have changed it to the contract we so made.

Q. You might have changed it to one of the same character that you did make, only in different proportions?

A. Yes, sir. In other words we would have been perfectly will-

ing to have changed the existing contract to any other that Mr. Payne may have proposed, that was not to our direct loss.

Q. Provided you got your proper share of the price in the China contract?

A. Certainly.

Q. That was one-half of the net price?

(McDonough:) Objected to.
(Court:) Objection overruled.
(McDonough:) Exception.

A. Yes, of the net price.

(McDonough:)

Q. And as I understand, the result of Mr. Payne's visit to you at the mill with Mr. Williamson, was the agreement between all of you to change what you allege to have been the former oral joint account contract to one which is now referred to as Exhibit "B", in this case?

A. That was the result of their visit. One of the results, that is.

225 Q. And at that time you were present at the conversation between Mr. Williamson and Mr. Payne?

A. Yes, sir.

Q. Now, you say that this timber was delivered according to contract to the Defendant, did you not? On board the "Hellas"?

A. Substantially it was, practically and substantially according to contract.

Q. Is it not a fact that of the fifteen pieces which should have measured 38 feet long and over, by 10 feet, 6 inches in circumference, six pieces were delivered 9 feet in circumference to 10 feet, 2 inches?

(Yeager:) Objected — at this time as being incompetent, immaterial, and not being relevant to any issue in the case at the present time, it having been admitted by both parties that there was 32,032 cubic feet of logs delivered and the question of the number, and the failure to fulfill the contract being raised by the Defendant Counsel.
Objection withdrawn.

A. There was not one of these pieces but was passed upon and accepted by Mr. Seitz, who said that although they were under the dimensions——

(McDonough:) Witness' answer objected to.
(Court:) Objection sustained.
(Yeager:) Exception.

(McDonough:)

Q. Now, of the two pieces 45 feet long, or over, and 10 feet, 6 inches in circumference, you delivered one piece, 9 feet, 8 inches in circumference, is that not so?

A. Without the list of the manifest, I cannot say out of my head, what logs were under the dimensions specified; actually delivered under the dimensions specified on the list which accompanies the

contract, I cannot say at this time. I know there were some
226 accepted as fully satisfactory but which were slightly under, but out of my head I cannot tell.

Q. You will be unable also to state as to whether of 32 logs of the diameter of 40 inches, that you only delivered 13 of that diameter?

A. What length?

Q. Well, immaterial as to length, but the diameter of 40 inches.

A. How many of these that were delivered?

Q. Yes.

A. Some of these logs ran over the dimensions lot there were half a dozen logs that were exact to the inch, or quarter of inch. Logs do not come that way. Some were from an inch to two inches up to seven inches under the dimensions specified, being the circumference of 10 feet, 6 inches, reduced to timber, which I think was what was placed in our specifications of the diameter of the logs, 40 inches.

Q. And you are unable to state whether they were all furnished at 40 inches in diameter, or not?

A. I can state that some were over 40 inches, a few were exactly 40 inches, and some were under 40 inches.

Q. Might there have been 13 of the 40 inches?

A. Out of 32?

Q. Yes?

A. There might have been.

Q. Now, is it not true that you failed to make delivery of that part of the contract which required one piece 45 inches in diameter, two of 42 inches, three of 40 inches and four of 38 inches?

A. We did not fail in delivery in as much as we delivered something that was practically satisfactory to Mr. Seitz, and as he was the man who was the purchaser, we did not fail as to that.

227 Q. Was it satisfactory to Mr. Payne at that time?

A. Did Mr. Payne himself see the delivery?

Q. At the time of delivery?

A. Everything that Mr. Seitz agreed to, that was satisfactory to Mr. Seitz, was satisfactory to Mr. Payne.

Q. Did he not protest against the delivery of the logs, as delivered by your people?

A. About a week or more after the delivery had been completed and this suit filed.

Q. You spoke of some expense you were put to. Just what were these expenses made up of, you said some P14,000.?

A. It is made up of the wage and food account, which consists of the wages and salaries of the employees of the Port Banga Lumber Co. employed on the pagatpat work; the expense of the "Mollie "B", the Company's launch, employed in towing logs and in other work under the same contract, and for a launch which was hired by the Company for a period of nine days and employed on that work, towing logs from the Mangrove Swamp to the place of loading; there were three launches lost during the period in which that contract was being worked, upon one being broken into and absolutely valueless and the other two lost in a storm; also time em-

ployed by myself, Redding, the actual time from that date on which I went on the work myself, left the mill and went up into the woods to direct the operations on the ground; the salary of Mr. Williamson during that period in which he was employed on the work of loading, a matter of a couple of weeks or more. That constitutes the expense account of completing that contract, or that portion of the expense account which has been answered in the amended complaint.

Q. Have you the vouchers for these payments for labor and food?

A. Vouchers of what description?

Q. Showing the payment of the amount? What is the amount?

228 A. The amount of wages and food is P9,497.91.

Q. What period does that cover?

A. That covers the month- of June, July, August, September, October and up to the 15th of November.

Q. Now, the month of June being the month in which you started to fulfil the contract?

A. Being the month in which we actually commenced. About, around the first days of June, in fact I gave the order to our head logger while Mr. Payne was at the mill, or the order had been given him then, but previous to that I had done work in looking for logs and that expense has not been included here.

Q. How many laborers did you employ?

A. You want the sum total-

Q. By the month?

A. During the month of June there were 45 laborers employed and one foreman at P200. a month.

Q. Was that foreman an American?

A. A Spaniard.

Q. What is his name?

A. Juan Joldon.

Q. What are the wages of the laborers?

A. They vary, but the price ordinarily paid is 75 cents a day with food, but I have each man, the pay of each man placed upon a sheet taken from our pay-roll book; I can state that the majority of them are paid 75 cents.

Q. Were those payment books kept by yourself?

A. They were kept by my clerk under my supervision.

Q. They are not your actual entries then?

A. The book is not. The entries are not made on the pay-roll book by myself.

Q. And the time kept of the amount of work is kept by the clerk?

A. No—is kept by the foreman and given to the clerk.

229 Q. Now, have you anything to show what you paid for food?

A. Our food runs 25 cents a day a man. This price has been obtained by years of experience. It will run some months a little over and some a little under, but the price I put at practically 25 cents, because I know from experience that that is what it costs.

Q. You have no vouchers for the money you spent for food, have you?

A. We have no vouchers for the food each man consumed, but we have vouchers for the provisions sent to the mill.

Q. How much of that P9,000., which you have mentioned, was for food?

A. P262.50.

Q. You spoke of your mill being closed down, when was that?

A. The mill closed down about the 1st day of October.

Q. How far was your mill from the loading place?

A. From the loading place, where the logs were gathered together it was about 18 miles, I called it 18 miles, but the logs themselves were cut a distance of from 2 to 12 miles away from the loading place; that is the logs had to be towed that distance to an island, where we assembled them upon the beach to await loading.

Q. How many men do you usually employ in your mill?

A. Well, to have a full crew at the plant we should employ close to 70 men, but frequently it runs down to 50. There is no way of having a certain amount of men in your employ month in and month out. It varies, the conditions of labor not being here so that you can control such things.

Q. That includes the mill and logging?

A. No, it does not.

Q. A complete crew would be about 70?

A. Yes.

Q. How many men are employed in logging?

A. The logging crew runs from in the neighborhood of
230 100, but as the conditions are the same as with regard to the mill, cometimes it runs away down low, but usually 100 men are employed.

Q. What made it necessary for you to go on the job?

A. It was made necessary by a knowledge upon my part that the work was not progressing in such a manner that it would be completed, as I thought before the time the boat was to arrive, and I considered it necessary to push the work by personally attending to it; it seemed to be behind.

Q. In other words, under your contract, Exhibit "B", you felt that you would not be able to comply with that contract within the period stipulated?

A. I did not feel that. I thought that the work was going too slowly and I feared that all the logs would not be there.

Q. So you went on the job to see to it that the contract was fulfilled within the period stipulated therein?

A. I went on the job to expedite matters, yes.

Q. And where was Mr. Williamson?

A. In Zamboanga.

Q. Did you say that he went on the job?

A. He came with the "Hellas" to aid the loading.

Q. Under your contract, Exhibit "B", you were to do the loading?

(YEAGER:) Objected to as being a written contract, showing for itself.

(COURT:) Objection sustained.

(McDONOUGH:) Exception.

Q. How long was Mr. Williamson on the job?

A. From the time the boat left Zamboanga, I think the 13th of October, until he returned to Zamboanga with Mr. Seitz, bringing him down to take him to the hospital, on the 31st day of October. In other words, from the 13th to the 31st.

Q. You spoke of two la-nchons being lost, to whom did they belong?

A. To the Port Banga Lumber Co.

231 Were they being manned by your Port Banga people when they were lost?

A. They were.

Q. The salaries you have given for Mr. Williamson, are those your regular salaries?

A. They are.

Q. And that salary is paid you for your services in Zamboanga?

A. Yes.

Q. For keeping the books and looking after the men; staying on the job?

A. Yes, for our services. Mr. Williamson as Vice President and myself as President.

Q. What are your duties as President?

A. My duty as President, the work is divided up, is to look after the producing end, the mill and the logging.

Q. Now during most of the time that this contract was going on your mill was in operation, was it not?

A. During this time there were only 10 or 11 days that the mill was in operation, during that period of which I have put in my salary on the expense acount.

Q. But part of that time it was in operation?

A. 10 days out of 60, yes.

Q. And during that time the logging was going on?

A. No, there was no logging going on.

Q. No logging?

A. Practically nothing, for that reason the mill was shut down.

Q. Was logging going on under this contract?

A. Under the pagatpat logging, certainly, in that you refer to looking for the logs. I wish to direct attention to the fact that the salary applies only to that period to which I was absolutely on the ground, myself, putting my whole time and attention on that work, and furthermore my general work is more or less super-

232 visory, the mill can go on without my being there.

Q. That is what you get your pay for, seeing that it goes on?

A. Yes, seeing that it is kept running, not only the mill but the logging work also.

Q. And, Mr. Williamson, helping to load?

A. He did in that case because it needed everything on that contract.

Q. Now then, this contract Exhibit "B", at 40 cents per cubic foot, for the amount of pagatpat logs furnished it would be about P12,800?

A. At the contract price?

Q. Yes?

A. Yes, something around there; twelve thousand, something.

Q. And you say it cost you to get out the lumber, P14,400?

A. Yes, sir.

Q. Can you account for the excessive expense?

A. I certainly can.

Q. Kindly state it?

A. The excessive expense was caused almost wholly by the large number of immense, large logs which required time, extra time, extra work, extra apparatus to handle. I can explain in one instance. There were a number of logs so large that I had to put gangs of men to digging canals from where they were felled in the mangrove swamp, a distance in some instances of 100 yards, out to the outer edge of the swamp into deeper water, where they could be loaded on the lanchons, otherwise we could never have gotten them, and aiding that method we had wenches installed upon a raft to drag them out, and in the instances in which we dug canals, as I have mentioned it required the wenches' power also to pull these logs out. The method employed in getting pagatpat logs is to pull them, usually between the tide times, between the full moon and the new moon, and
233 then during high tide get them out of the swamp by means of lanchons, and at the highest period of the water, take them out into the deeper water, where they would be more readily loaded. But there were large numbers of these larger logs that the tide did not get high enough to be able to get them out by that method. We had to take extraordinary methods. We even went to the expense of digging canals to get them out of the mangrove. These extraordinary logs required extraordinary methods; and hence being extraordinary method- we employed it required so much more labor and time and expense.

Q. But previous to entering into this contract you had gone thoroughly over the ground and inspected it?

A. Thoroughly over the ground—we had not gone thoroughly over the ground.

Q. Did you not testify that you spent a month-and-a-half going over these logs?

A. I said I had a man employed trying to locate these largest logs.

Q. For a month-and-a-half?

A. Not continuously, but from time to time.

Q. Notwithstanding that, having that information with you at that time, you said in the interview with Mr. Payne that they could be gotten out at a cost of 25 cents per cubic foot?

A. I expressed a doubt at 25 cents per cubic foot.

Q. Mr. Payne went away at that time, after the agreement between

you, with the understanding that in your opinion it would cost 25 cents per foot to get out these logs?

A. I do not know what his opinion was.

Q. You so said to him, did you not?

A. As I have said it might be impossible to do it.

Q. And that was based on your knowledge of the conditions of the logs as reported to you by your men and by the specifica-
234 tions he had shown you?

A. It was based on my general knowledge of getting out pagatpat logs.

Q. But it was also based on the condition of the timber as reported by your men and the specifications of the logs required?

A. I do not think so. That apparently had not very much influence with me or I would have given more attention to it.

Q. You sent them out and kept them out a month-and-a-half and paid no attention to their report?

A. I did not pay the attention I should have.

Q. You employed these men and kept them there and then they came in and made a report to you and you paid no attention to their report?

A. Yes, I paid some attention to them. I testified that when the men there reported, I was not surprised when they announced to me that the contract had been obtained.

Q. And did you not also testify that on their reporting, you hesitated to take a contract for such large logs?

(YEAGER:) Objected to on the ground that the records will show that.

(COURT:) Objection sustained.

(MCDONOUGH:) Exception.

Q. Mr. Redding, as I understand you, up to the visit of Mr. Payne to your mill in May, 1910, there had never been any talk or any information to your people, the Plaintiff Company, as to the price which was expected to be obtained on the logs for China and the contract which he was to get?

A. Personally nothing ever came to my ears, personally.

Q. As President of your corporation, did you ever have any offer of any price on that contract?

A. Definite price, no.

235 Q. Previous to his showing you the specifications on that visit of his to your place in May, 1910, you, or your Company, never had any definite knowledge as to the amount of logs that would be demanded under the contract in China, did you?

A. The definite amount of cubic feet I do not think I knew about until his visit. I do not think I did, no.

Q. Now, at the time of the arrival of the "Hellas" at the loading place, were the logs called for in contract, Exhibit "B," ready for loading?

A. I will have to explain in my answer——

(YEAGER:) Objected to as being immaterial, irrelevant and incompetent at this point, not being proof in any point in issue at

the present time and not made to prove the allegations of the Defense.

(COURT:) Objection overruled.

(YEAGER:) Exception.

A. There were sufficient logs, numerically, upon the beach on the arrival of the "Hellas" to fill the contract but they had been inspected by Mr. Payne and Mr. Seitz, who announced that some of the larger logs were missing, or in other words some of the logs inspected could not be accepted, as they fell too far below the dimension to be accepted by them, therefore they were lacking. Numerically there were a sufficient number. The specifications cover 310 pagatpat and we had on the beach at the time the ship came there over 350.

Q. You say Mr. Seitz said something to you about there being a sufficient number there?

A. No. I said myself, of my own knowledge there were, but Mr. Seitz and Mr. Payne upon the inspection of those in logs, in which they picked the perfect or nearly perfect ones, announced to me that there were a certain number of the logs that were not there.

236 In other words, all of the different dimensions of the specifications had not been filled, that is he could not find them on the beach, therefore they had included a certain amount of logs, you understand, having defects, some logs that were up to the dimensions but had certain defects were rejected, and there were some that had a slight defect that were accepted conditionally in this manner, that if a better log was not supplied between that time and the time the ship was finished loading, then that log would be accepted. In other words Mr. Seitz and Mr. Payne overlooked in those the right to reject upon a slight defect, upon the hope of getting a better log in the meantime and if they did not get a better log then that log would be declared accepted, and on that basis they told me there were a certain number of logs that had not been supplied.

Q. Is it not a fact that the Steamship "Hellas" had to go to Cotabato to pass a week in order that you might get the balance of the logs on the contract?

A. It is not a fact.

Q. Is it not a fact that the Steamer went to Cotabato?

A. It is a fact that the Steamer went to Cotabato.

Q. Previous to your agreement with Mr. Payne in the month of May, as to the price of 40 cents for the pagatpat logs, had you ever sold pagatpat to the Defendant Company?

A. Not in the logs, no.

Q. In sawn lumber had you?

A. My memory is not exactly clear on that point, but I think we shipped him at one time a slight amount of sawn pagatpat.

Q. Did the Company ever make him an offer on pagatpat in amounts of ten thousand feet or over?

A. I cannot state that positively. Mr. Williamson could testify much better on that point than I can. He attends to the correspondence. I would not like to say positively.

237 (YEAGER, cross-examination:)

Q. In cross-examination you said a combination was considered between your Company and the Defendant Company at one time, at that time who was the President of the Defendant Company?

A. Mr. W. W. Payne.

Q. You say that was in 1908?

A. No. No, my recollection of it is that it was—I do not know whether it was the latter end of 1909 when those letters passed or the talk took place between Mr. Williamson and Mr. Payne, in as much I do not conduct the correspondence, and I got this from Mr. Williamson, I am not clear about it but I know something of the kind passed.

Q. Prior and subsequent to that time has your Company done business with the Defendant Company, timber?

A. Before that conversation came up?

Q. Yes?

Q. Yes, we had sold them lumber.

Q. And subsequent to that time?

A. Yes.

Q. During all of this time who was President of the Defendant Company?

A. I understood it to be Mr. W. W. Payne.

Q. What have been your commercial relations with Mr. Payne during that time with regard to friendship or enmity between you?

(MCDONOUGH:) Objected to as being immaterial and irrelevant.
(COURT:) Objection overruled.
(MCDONOUGH:) Exception.

A. The relations were most cordial indeed, we had done a very satisfactory business with Mr. Payne and we relied upon him largely to handle our lumber in Manila, introducing it there and almost entirely relying upon him to handle it for us. Our relations were very friendly.

238 Q. With regard to this cargo of pagatpat logs in question in this case, state what was the nature of that cargo of logs with reference as to whether or not it was ordinarily marketable, ordinary lumber furnished in the market?

A. Practically——

(MCDONOUGH:) Objected to as being immaterial and irrelevant under the issues in this case.
(COURT:) Objection overruled.
(MCDONOUGH:) Exception.

(YEAGER:)

Q. Finish your answer to the last question.

A. About 30 per cent of the cubical contents of this order would be considered as ordinary dimension pagatpat logs, such as is gotten in the Moro Province; the other 70 per cent and especially, let us say 40 per cent of that 70, not the number of logs but the cubical contents of that order, were most extraordinary logs.

(COURT:)

Q. Size?

A. Size, length but *partically* the diameter, such as I can fairly state within my knowledge, as had never been loaded in the Moro Province and I may say in the Philippine Islands, up to that contract. [redacted]

Q. Would it pay a lumberman to get out such logs as you describe there, those large sizes, and take down apparatus to make commercial lumber out of it?

(McDONOUGH:) Objected to.

(COURT:) Question withdrawn.

(McDONOUGH:) I ask that the answer of the witness to the last question be stricken out, on the ground that there has not been argued in this case, any question of the ambiguity of the contract, Exhibit "B," and the answer being an attempt to explain that contract which is perfectly clear on its face, I ask that it be stricken out as being irrelevant.

239 (COURT:) Motion denied.

(McDONOUGH:) Exception.

(YEAGER:)

Q. How long did you state that Mr. Payne and Mr. Seitz arrived at Port Banga before the Steamer "Hellas" arrived there?

A. They arrived at Port Banga on, about the 19th or 20th of September.

Q. When did the "Hellas" arrive?

A. The "Hellas" arrived at Port Banga on her way to the loading place on the 14th I think, the 13th or 14th of October.

Q. October?

A. Yes.

Q. Did Mr. Payne and Mr. Seitz arrive at the mill together?

A. They did.

Q. Did they remain there together, up to the arrival of the "Hellas?"

A. No, they remained at the mill a matter of one day, I think, and then I took them up to loading place on Buluan Island, and they there remained until——

Q. Where were these logs inspected?

A. At Buluan Island, in the water.

Q. They were inspected by whom?

A. By Mr. Payne and, Mr. Seitz, inspected and marked. Inspected, accepted or rejected, and marked, numbered with a pencil, under the supervision of these two men, the work being done entirely by them, no representative of our Company being present the greater part of the time.

Q. Then were these logs so marked, by Messrs. Payne and Seitz, the same ones that were loaded on board the "Hellas?"

(McDONOUGH:) Objected to as being immaterial under the issues in this case.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

240 A. They were the same logs, with the exception of a few so marked, that were not loaded because other logs in the meantime arrived, which took their place and accepted as being better logs. A few of the marked logs, so marked, were not loaded.

(COURT:)

Q. Other logs were substituted to the satisfaction of Mr. Payne and Mr. Seitz?

A. Yes, more satisfactory than certain logs they had marked and conditionally accepted.

Q. Up to the departure of the "Hellas" from Buluan and Port Banga, was there any objection made by Messrs. Payne and Seitz to the logs delivered to them by you in fulfillment of this pagatpat contract?

(McDONOUGH:) Objected to as being immaterial and irrelevant under the issues of this case.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

A. You mean after the loading?

(YEAGER:)

Q. Yes?

A. No, there had been no protest, they seemed to be more or less satisfied with the way things were going.

(McDONOUGH:) Objected to the latter part of the answer.

(COURT:) Objection sustained.

(YEAGER:) Exception.

Q. Have you ever heard in a general way of any reduction in the sale price between Payne and Seitz, that is a reduction made by Mr. Payne to Mr. Seitz from the contract price of these logs as fixed in the contract between the Export and Import Lumber Company and the China Export and Import Lumber Co.?

241 A. I have heard of and know of a sort of promise being entered into between these two parties, while they were here in Zamboanga, by which Mr. Payne's Company was to refund a portion of the funds received on that contract for certain alleged damages in the fulfillment of the contract, set up by Mr. Seitz.

Q. Did your Company, or any of its officials, take part in any such promise or agreement between the Defendant Company and the China Export and Import Lumber Company, Mr. Seitz's Company?

(McDONOUGH:) Objected to as being immaterial, incompetent and irrelevant under the issues of this case.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

A. Our Company did not take any part in that promise, nor were we informed of it until sometime after. We did not have knowledge of it.

Q. Had your Company ever agreed to any reductions in the con-

tract price of these pagatpat logs as fixed in the contract between the Defendant Company and the China Export and Import Lumber Company?

(McDONOUGH:) Objected to as being immaterial, incompetent and irrelevant.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

A. Our Company never has.

(YEAGER:)

Q. Had your Company ever accepted or ratified any reduction made by the defendant Company to the China Export and Import Lumber Company from that contract price fixed in their contract between you?

(McDONOUGH:) Objected to as being incompetent, immaterial and irrelevant.
(COURT:) Objection overruled.
242 (McDONOUGH:) Exception.

A. It has not.

(YEAGER:)

Q. You have testified that certain lanchons were lost in complying with. completing the pagatpat contract; how many lanchons were lost?
A. Two were lost. One went to the bottom of the sea, and one was broken into so as to render it absolutely useless thereafter.
Q. What was the value of those three lanchons?
A. The broken one had a value of P250. It was very large, one of the largest I have ever seen. The other two; well, a price of P150. a piece would be a just valuation, they were about the same size, the two that were lost.

(McDONOUGH:)

Q. You stated that Mr. Payne and Mr. Seitz came down here to inspect the logs?
A. They went up to the loading place to inspect them.
Q. Came down here from Manila?
A. Yes, Manila.
Q. Were they notified by you that the logs were ready for inspection, or had your Company?
A. I do not think they were.
Q. It took them some three weeks to inspect the logs?
A. The actual work? I think they were actually working on these logs a period of two weeks, inspecting them. They did not work constantly.
Q. And were they personally there inspecting, when the boat was there?
A. Yes.
Q. And they finished their inspecting when the boat was there?

A. I think they finished their inspection a little before we got there.

Q. You are not sure?

243 A. I am pretty sure they did. The logs were coming in all the time, all during the time of their inspection. Now the logs were coming in——

Q. They were coming in all the time right up to the time the boat arrived?

A. And until the boat left, that is the boat left for Cotabato.

Q. When did you first hear of the reduction having been made by the China people from the Defendant, Mr. Payne?

A. I believe my first knowledge was obtained from seeing the record of this case, the papers of this case, in the hands of Mr. Yeager. If I am not mistaken I saw it first in the possession of Mr. Yeager, a copy of that agreement, if I am not mistaken.

(COURT:)

Q. After this suit was begun?

A. Yes, long after. It must have been within the last two months.

(McDONOUGH:)

Q. You said in your examination by Mr. Yeager, that the lumber which was at the loading point was marketable lumber?

A. What?

Q. Marketable lumber?

A. I testified that the logs shipped was marketable lumber.

Q. In reply to a question put to you by Mr. Yeager, you testified that the logs which were at the loading point and which were afterwards put on the Steamer "Hellas", was good marketable pagatpat, did you not?

A. I do not remember any answer to a question of that kind. I can remember answering about 30 per cent of these logs furnished on this, would be considered ordinary marketable logs, commercial logs, and the balance very large logs; but I can answer that question by saying that every one of these logs were marketable logs.

244 Q. And a number of them were rejected?

A. Number rejected.

(COURT:)

Q. By whom?

A. Well, the rejection- were made by Mr. Seitz, he being the party that was to be ultimately pleased, he measured them in the presence of Mr. Payne.

Q. With Mr. Payne there?

A. Mr. Payne there.

Q. And as I understand from you, after they were loaded on the Steamer, that Payne checked them, going over all the lumber that had been accepted by Seitz?

A. Yes.

Q. And all that went on Board the Steamer were accepted?

(McDONOUGH:) Objected to.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

A. No, I cannot make that positive assertion, because a few went on board the Steamer that had been rejected but were brought out by mistake. A matter of 320 logs that were put on board the ship were accepted by Mr. Seitz and Mr. Payne.

(COURT:)

Q. Out of how many?
A. A matter of 320 logs were accepted as complying with the contract.
Q. How many were there in all?
A. I cannot answer that right off without the manifest. There was a matter of more or less, I think somewhere about 30 or 40 logs; well there may have been as much as 50.
Q. Why were they put on board the Steamer and shipped if they did not agree to accept them?
A. I will explain that by saying that a great number of these logs that were actually marked they did not accept them, there-
245 fore other logs were put in their place, but notwithstanding the men ashore got into a disagreement as to those accepted and not accepted. If they bore the marking they were brought along side the ship and then were brought on board the ship, then by consulting the mark Mr. Seitz and Mr. Payne consulting their book agreed that it was a rejected log and it would not be accepted as a log, and the log was put on the ship as too difficult to take it back ashore.

(McDONOUGH:) Objected to.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

(COURT:)

Q. What did they say?
A. They were willing to take it ashore, but as far as I was concerned the log would cost more to take it off.
Q. They were put on board without being accepted on the contract, that is what gave rise to this claim?
A. Yes, sir. The amount of logs on the contract was 310 and 320 were accepted as delivered on that contract.
Q. The contract was fulfilled?
Question withdrawn.

(YEAGER:)

Q. This contract called for 310 logs. I will ask you to state how many logs were delivered and accepted on that contract by your Company to the Defendant Company?

(McDONOUGH:) Objected to.
(YEAGER:) Question withdrawn.

Mr. Yeager, Attorney for the Plaintiff Company, read the deposition of Mr. Seitz and Mr. Payne, taken in Zamboanga, 1910.

(YEAGER:) The deposition of Mr. Carl Seitz and Mr. W. W. Payne, taken in Zamboanga, the 21st day of November, 1910, in open Court together with Exhibit "A" of the Plaintiffs'
246 thereto attached, which is an identified and true and exact copy of the contract between the Export and Import Lumber Co. Ltd. of Manila and the China Export and Import Lumber Co., Ltd. of Shanghai, and which is attached to the record in this case, being Civil Case No. 275 of this Court, by agreement of Counsel, is considered shall be taken as having been read in the trial of this case, and the Plaintiff offers said contract between the China Export and Import Lumber Co., Ltd., and the Defendant Company in this case, which contract is marked Exhibit "A" for the Plaintiff, in evidence.

(YEAGER:) I introduce the deposition of Mr. William L. Ramsey, whose deposition was taken on the 1st day of March, 1911, in Manila, which deposition is attached to the record in this case, and may be considered as having been read in evidence.

(YEAGER:) By special agreement of Counsel made in open Court, it is admitted that the Defendant Company, the Export and Import Lumber Co., Ltd., of Manila, received from the China Export and Import Lumber Co., Ltd., of Shanghai, the full contract price for the cargo of pagatpat logs in question, of P1.80 per cubic foot, as fixed in the contract between the Defendant Company and the China Export and Import Lumber Co., Ltd. (this contract is marked Plaintiff's Exhibit "A"), less the amount of $8,750., gold, that is to say P17500., which was deducted from that contract price in pursuance of an agreement between the Defendant Company and the China Export and Import Lumber Co., Ltd.

Mr. WILLIAMSON, the first witness for the Plaintiff Company, was recalled to the stand, and testified as follows:

(McDONOUGH:)

Q. Mr. Williamson, in your examination you referred to certain statements made by Mr. Payne, when he told you he had obtained the contract from the China people, and asked to change the contract between you and him to one of straight sale now do you know whether or not any of these statements which were made to you at that time were false, and if so which of them, of your own knowledge?

247 A. The 55 cent price is false because this contract shows it.

Q. That is the only one, which to your knowledge, you know to be false?

A. That is a pretty general question. In all our dealings with Mr. Payne?

Q. No, in regard to this one contract.

A. That is the main thing.

Q. You say that is the main thing. Do you know of any other

thing which induced you to change the contract, which you allege was an oral joint account contract, for the written contract, Exhibit "B", except that he misrepresented the price to you, any other statements which he made to be false other than the statement as to the price which he had obtained from the China people?

A. No.

(YEAGER:) I offer Exhibits "B" and "C" for the Plaintiff, in evidence.

(McDONOUGH:) The Defendant offers in evidence, as Exhibit "1", the letter of the Plaintiff herein, to the Defendant Company, identified by Mr. Williamson.

As Exhibit "2", the Defendant offers in evidence the letter of the Plaintiff Company to the Defendant Company, dated August 26th, 1910, which letter has been identified by the witness for the Plaintiff.

(YEAGER:) I object to the introduction of Exhibit "2" for the Defendant, on the ground that it is incompetent, irrelevant and immaterial, not properly identified, and on the further ground that it is not now in the same condition as it was when it was signed.

(McDONOUGH:) The Defendant states that there is a pencil line drawn along two lines of this letter, which the Counsel for the Defendant drew because of the number of documents he had with him, so that he might have his attention drawn to the right line immediately.

(COURT:) Objection overr*l*ued.

(YEAGER:) Exception.

248 (McDONOUGH:) The defendant now offers in evidence, as Exhibit "3", letter of the Defendant Company, through its President, Mr. Payne, dated Zamboanga, November 21st, 1910. This is a copy of the original letter and it being impossible to obtain the original, it is agreed by the Counsel for both parties that this is a true copy.

As Exhibit "4" for the Defendant, I offer in evidence, letter of the Plaintiff Company, dated the 21st day of July, 1910, signed by Mr. Williamson as Vice-President of the Plaintiff Company, directed to the Defendant, which letter has been identified by the witness for the Plaintiff, and we call the attention of the Court to the last paragraph of this letter. I would also state in this connection that the Counsel for the Defendant has drawn a pencil line around this last paragraph for the same purpose that he drew one in the other letter.

The Defendant offers in evidence as Exhibit "5" contract between the Plaintiff Company and the Defendant Company, which is mentioned in the Defendant's answer as Exhibit *"I"*.

As Exhibit "6" for the Defendant, I offer in evidence the contract entered into between the Defendant Company and the China Export and Import Lumber Co., which is mentioned and described in Defendant's answer as Exhibit "2".

I offer in evidence, as Exhibit "7", the document executed at Zamboanga, between the officers of the China Export and Import

Lumber Co. and the Defendant Company, a copy of which is attached to the Defendant's answer, marked Exhibit "3", which I offered in evidence.

(YEAGER:) Objected to on the ground that it is incompetent, irrelevant and immaterial and because it in no way proves or tends to prove an issue in this case, because it can in no way affect the Plaintiff herein, the Plaintiff not being a party to the same and not being shown that the Plaintiff had knowledge of, nor concurred to nor has ratified the same in any way, shape, manner or form and on the further ground that in this memorandum of set-
249 tlement reference is made to two other agreements and other documents which are not specified in, described in, or attached to the document now offered in evidence.

(COURT:) Objection overruled.

(YEAGER:) Exception.

It is admitted by the Plaintiff that such a document was executed by and between the Defendant Company and the China Export and Import Lumber Co., at the time and place indicated in said document.

(McDONOUGH:) The Defendant now offers in evidence the deposition of William L. Ramsey, being the same deposition which was offered by the Plaintiff in this case, and being stipulated between the Counsel that it is offered as having been read.

The defendant offers in evidence the deposition of Mr. A. B. Adams, which was taken before a Notary Public in the City of Manila, on the 10th day of June, 1911, and which appears in the record. The taking of this deposition has been agreed to by the Counsel for both parties.

The Defendant offers in evidence the deposition of Mr. Carl Seitz, which was taken in Shanghai, China, under the stipulation of the parties in the case, which deposition reads as follows:

(Mr. McDonough read the deposition of Mr. Seitz to the Court, to which Mr. Yeager objected for the following reasons:)

(YEAGER:) To question 13, propounded to Carl R. Seitz, the Plaintiff objects on the ground that it calls for a conclusive opinion of the witness, and it is not shown that said witness has had sufficient experience or has been qualified as an expert to enable him to so testify.

(McDONOUGH:) Defendant objects to the objection of the Plaintiff at this time, under Section 362 of the Code of Civil Procedure.

(COURT:) The Court overrules the Defendant's objection to the Plaintiff's objection and sustains the objection of the Plaintiff to the question.

(McDONOUGH:) Exception to both rulings.

250 (YEAGER:) The Plaintiff objects to question 14, propounded to Mr. Seitz, in his deposition, on the ground that it is based upon and follows question 13, and embraces or calls for his answer, to which the Court has sustained the objection of the Plaintiff, and also objects on the further ground that it calls for

a conclusive opinion of the witness, he not being qualified for the same.

(COURT:) Objection sustained.

(McDONOUGH:) Exception.

(YEAGER:) Question 15 objected to, same objection.

(COURT:) Same ruling, objection sustained.

(McDONOUGH:) Exception.

(YEAGER:) Question 16 objected to, same objection.

(COURT:) Objection sustained, same ruling.

(McDONOUGH:) Exception.

(YEAGER:) The Plaintiff objects to question 21, propounded to Mr. Seitz, taken in his deposition, because it assumes facts which have not been proven and for the further reason that it calls for a conclusive opinion of the witness, the proper foundation for the same not having been laid.

(COURT:) Objection overruled.

(YEAGER:) Exception.

Cross-interrogatories, deposition of Mr. Carl R. Seitz.

(McDONOUGH:) Defendant objects to question 4, cross-examination of the witness, on the ground that it is immaterial.

(YEAGER:) Question withdrawn.

Answer to question 4, withdrawn.

(McDONOUGH:) Defendant objects to question 6, cross-examination of the witness, as immaterial.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

251 (McDONOUGH:) I offer in evidence Exhibits "A" and "B", which were mentioned by the witness Seitz in his examination.

(YEAGER:) Objection as previously made by the Plaintiff to offer and admission.

(COURT:) Objection overruled.)

(YEAGER:) Exception.

(McDONOUGH:) The Defendant offers in evidence as Exhibit "1", which is referred to in the deposition of Adams as Exhibit "1", the same document which I have offered before as Exhibit "1" in this case.

The Defendant offers in evidence as Exhibit "2" to the deposition of Adams, this document dated November 19th, 1909, from the Port Banga Lumber Co., being a statement of account.

Also offer as Exhibit "3" to the deposition of Mr. Adams, document dated the 24th of November 1909, addressed to the Defendant Company; and Exhibit "4" to Adams' deposition which was identified in the deposition.

The Defendant also offers as evidence, this document as Exhibit "5" to the deposition of Adams, dated, Zamboanga, April 1st, which has been identified and referred to by the witness, Adams, in his deposition as being "5" in his deposition.

The Defendant offers in evidence the letter of the Port Banga Lumber Co. to the Defendant Company, dated August 2nd, 1910,

as Exhibit "8"; and the letter of the said Plaintiff Company to the Defendant Company, dated the 5th of August, 1910, as Exhibit "10"; and also the telegram dated the 3rd of August, 1910, as Exhibit "9", which is mentioned in the letter of August 2nd, (Defendant's Exhibit "8"). The telegram is written in code and I have translated it, the translation being written at the bottom of the document by the Counsel for the Defendant.

252 (YEAGER:) I object to the introduction of these letters and telegram, for the reason that they are incompetent, irrelevant and immaterial, and they are not shown to effect, or have any bearing upon, nor do the letters and telegram show that they refer to or bear upon, any issue in this case. It is duly admitted that the said letters and telegrams were written between the Defendant and Plaintiff Companies.

(COURT:) Objection overruled.

(YEAGER:) Exception.

Mr. REDDING was recalled to the stand in rebuttal by the Attorney for the plaintiff and testified as follows:

(YEAGER:)

Q. Mr. Redding, were you present at Buluan Island when the Steamship "Hellas" was loaded with these pagatpat logs in question?

A. A portion of the time I was, yes.

Q. During what portion of the time?

A. From the time she arrived from Cotabato until she finished loading, I was there all the time, from the time she arrived at Buluan Island until she left for Cotabato, I was there, I should say about half of the time, because I made several trips to the mangrove to get logs. During that period of loading I was not there constantly but I was there quite frequent.

Q. You have testified that a certain part of the logs were on the beach at the time of the arrival of the "Hellas", will you again state what part of the entire cargo was on the beach at the time the "Hellas" arrived?

A. I can state approximately. The number of logs on the beach at that time that were put on board—there were on the beach at that time in the neighborhood of 360 or 370 logs but quite a number of them were eventually, had been rejected, were not put aboard, but I should say there were in the neighborhood of 370 or 375, no 170 or 175 logs that were on the beach upon the arrival

253 of the "Hellas", that eventually were put aboard as a part of that China cargo.

Q. Who was in charge of the work of bringing in the other logs to be put aboard the "Hellas"?

A. I was in charge of it, but some of these trips of the launch to tow the logs in, were made without me being aboard, you understand, and some of them were not, I went along as part of the

trip of the launch while she was towing. It was under my charge, this work.

Q. State whether or not there were logs at that loading place at all times during the loading of the "Hellas" in sufficient quantities to keep her supplied with logs?

A. There were.

Q. State whether or not at any time there was a delay in the loading of the "Hellas", because of failure on the part of the plaintiff company to have logs on hand ready to be loaded?

A. There was never a moment's delay on that account. Once or twice, I believe, there were lanchons sent away from the side of the ship to the shore on account of a sudden squall, when it looked as though the lanchons might fill and sink, but it was for a short period only, once or twice, but not for lack of logs.

Q. Were you on board the "Hellas" during the time she was at Buluan Island for these logs?

A. When I was in Buluan Island I stayed aboard the "Hellas" with the exception of those two or three trips which I made with the launch.

Q. State what was the condition of the "Hellas" with regard to tackle, blocks, chains and gear, used in loading logs of this kind?

(McDONOUGH:) Objected to.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

A. For the loading and discharging of ordinary cargo, I should say the tackle——

(McDONOUGH:) I wish to put in the further objection that
254 the witness is not qualified to answer.

(YEAGER:) Question withdrawn.

Q. What was the weight of these logs that were being loaded at Buluan Island on the "Hellas"?

A. I should say they ran from two or three tons up as high as eighteen tons. We could arrive at that fact very accurately from having the dimensions exact in a cubic foot, and I myself, remember raising the same discussion aboard, as to the weight of pagatpat. We had a cubic foot of pagatpat hewed out on the beach, of almost exact dimensions and taken aboard and weighed. It weighed 75 pounds and with that as a base we could arrive at the weight of nearly every log placed on board if any discussion came up.

Q. Did you measure and calculate the weight of any of these logs?

A. We did, yes.

Q. And you say that some of the logs weighed as high as eighteen tons?

A. Yes.

Q. Were you present when these heavy logs were placed on the ship?

A. I was because the largest of these logs, the heaviest and most

difficult to load were left to the last, until after the ship returned from Cotabato and I was aboard after she returned, the entire time.

Q. State what happened, what occurred to the tackle and gear, blocks, chains, etc., of the ship while these logs were being loaded?

A. During the early stages of the loading there were a great many accidents to the tackle and the gears and the chains. One log was lost overboard, while being hauled up the side, through the breaking of a chain. Another log was being loaded in the hold, a very large log by the way, when in some manner the cable slipped and the log came down on the sill, breaking off with a jerk, which broke the heavy cable stay extending from the base of the ship's
255 mast. An investigation afterwards held, showed that the mast had been buckled down close to the deck, and all work was suspended until that mast could have fresh stays put practically on all sides before that log was lowered an inch.

Q. What did you mean by saying, "accidents happening to tackle and gears"?

A. Breaking, continually breaking; demonstrating that the gear and tackle was not sufficiently strong for such heavy weights.

Q. Did that gear and tackle belong to the ship "Hellas"?

A. Belonged to the ship "Helias", or was found aboard when she anchored there.

Q. Was there any gear, blocks or tackle in the hold of the ship to handle the cargo after it had been placed therein, to stow it?

A. I believe in one or two hatches there were some block and tackle to aid in distributing and stowing some of the smaller logs, as to the larger logs it was impossible to even move by block and tackle one of these large logs.

Q. Was there any block and tackle supplied below to assist in stowing the larger logs?

A. These block and tackles taken below were simply ordinary two and three sheaf tackles and they were taken below in the hold to aid in hauling some of these, as I said used on the smaller logs, as they were not by any means sufficient to aid in the larger and heavier logs.

Q. How many hatches were loaded at one time?

A. Only two.

Q. How many hatches did the ship have?

A. Four.

256 Q. Why were not the four hatches loaded at one time?

A. The Captain would not permit more than two hatches to be loaded at a time, owing as he said, to the strain on the masts, he feared the masts would not stand it. That was the principle reason, and it was eventually the only reason, but the first four days of the loading only two of the hatches were clear to load in, the other two hatches being equipped during that time with heavier spars in order to take in the heavier logs. The number 2 and 3 hatch were prepared especially to handle the big logs and no loading took place in them for, I think, a good three or four days after the ship got there, but thereafter when all the hatches were cleared and

could have been loaded in, the Captain refused to permit it after he saw the effects of the loading of one or two of those immense logs, upon his masts.

Q. If the Captain had permitted you to load the four hatches at one time could you have done so?

A. We could have.

(McDONOUGH:) Objected to as calling for an opinion of the witness and not based on any of the facts in the case.

(COURT:) Objection overruled.

(YEAGER:) Question withdrawn.

Q. If the Captain of the ship had permitted you to load the four hatches of the ship at one time, did you have sufficient logs on hand to load the four hatches at one time?

(McDONOUGH:) Objected to, as the witness has not been qualified to answer such a question.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

(COURT:) Who was doing this loading, the ship or you?

257 A. That is a question I cannot answer Judge, because it was necessary we put a man on board. The loading really was under the direction of the ship, the ship's officers, but we had one man aboard there to look after two hatches, that is alternating and with him were working three of the officers, but our man had so much more knowledge of this work than the three officers, that he really had charge of it.

Q. Of these logs?

A. Yes.

Q. Have you had considerable experience in the way of putting logs on board ships?

A. No, not actually superintending the work, but I saw it done. yes.

(McDONOUGH:) Object to the questions of the Court as calling for incompetent testimony.

(YEAGER:) If the Court please, the question having been asked by the Court and no objection having been made, and the question having been answered by the witness, I submit that the objection of the defendant comes too late, that after having allowed the answer to go in, he cannot object to the question.

(COURT:) Questions of the Court withdrawn.

(YEAGER:)

Q. What experience have you had, Mr. Redding, in loading logs?

A. I have been aboard on numerous occasions during the last seven or eight years when ships have been loaded, our logs and our lumber for Manila and for logs sent to Europe and other places.

Q. But for how many years have you had that experience?

A. Seven or eight years, I have seen off and on, ships loading.

258 Q. What experience have you had in the way of blocks and tackle and gear, in handling logs?

A. Well, I have told you I have been around and a spectator of that work for the last seven or eight years, but personally conducting them myself I have had very little experience, so far as that goes.

Q. In the way of block and tackle and gear, outside of ship around the mill, in the mangroves, and other places, what has been your experience?

(McDONOUGH:) Objected to as being immaterial.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

A. I have had considerable experience in that line, especially in the last four years, since I have been at the mill.

Q. State to the Court specifically what that experience has been?

(McDONOUGH:) Objected to as being immaterial and incompetent.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

A. I have had considerable during that time, during the four years I have been at the Port Banga Saw Mills, because we draw logs up into the mill using block and tackle upon the larger logs. We have raised heavy weights there at the mill, such as the placing of heavy and long joints upon pillars that necessitated the erection of a sheaf pulley, block and tackle. Upon two occasions that has been done during that period and in other ways used block and tackle, that I cannot remember just exactly at the present time. We were continually using them there. The occasion arises and it is done under my eyes and very frequently my supervision.

259 Q. Do you use block and tackle in getting out logs from the forest?

A. Yes, we do that, we have in the last year. We have had machines employed in dragging logs from the mangrove, which requires the use of heavy blocks, and heavy wire cable.

Q. Has your experience been in handling and moving, as well as in lifting logs and weights?

(McDONOUGH:) Objected to as leading.
(YEAGER:) Question withdrawn.

Q. What has been your experience in moving and handling weights and logs during this time stated by you?

A. Well, as I repeated before, I have had considerable to do with that, on charge in the woods and at the mill, and upon many occasions on board ship while it was loading our cargo of logs and lumber heavy timber, piles, etc. Another occasion in particular, I remember, on two occasions we loaded at one time 2000 logs, pagatpat piles, for the Philippine Railway Company, and on another occasion about 12,000 piles for the same Company, requiring a matter of a week or ten days of continual work. On both of these occasions I was aboard and aided in the loading.

Q. State whether or not in your opinion, the "Hellas" was equipped with sufficient gear, blocks, tackle and chains, etc., to load these pagatpat logs in question, aboard the ship and to handle them after they were there?

(McDONOUGH:) Objected to on the ground that the witness is not qualified to answer.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

260 A. When she reached there she was not properly equipped. It is true she eventually loaded, raised from the lanchons and placed on board these heavy logs, but it was with the greatest difficulty and with a great loss of time, and a number of those logs were placed on the deck where no winch was necessary, but those large logs that were placed in the hold, were not the larger logs, were not moved from the place where they were set after the chain had been taken from them.

Q. You state that they were placed on board after a great loss of time. How was that great loss of time caused?

A. It was caused by a lack of sufficient gears and machinery for the handling of these logs, these larger logs, to move them around and stow them, as should have been done. Mechanical appliances were lacking.

Q. Mechanical appliances on board the ship?

A. On board the ship.

Q. State, did the tackle and gear and blocks which they had always remain sound?

(McDONOUGH:) Objected to as immaterial.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

A. The ship's tackle were not only continually breaking but a loss of time was caused by the chain or tackle wire becoming worn, or it would show indications of weakening and the work would have to stop until a new one put on and the mechanics on board ship were kept quite busy in order to keep the work moving.

Q. What was the condition of number "2" hold on that ship upon her arrival?

(McDONOUGH:) Objected to on the ground that *hte* witness is not qualified to answer and, second, that it is not rebuttal
261 of any evidence in the case.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

A. Upon her arrival, number "2" hold was found to be about 35 feet long, which was not sufficient to accommodate these longer logs, a number of which ran up to as high as 40 feet, 45 feet, and 38 feet, and it was found necessary to remove, what would be termed I suppose a temporary coal bunker. One section of this entire hold being occupied by a 15 foot space coal bunker, made by upright

heavy planks, which separated this hold into two parts, one side the coal bunker of 15 feet, the other side of open space——

Q. For cargo?

A. For cargo, and it was found necessary to remove that bunker and take the coal out, some of which must be stowed in after being transferred along the entire length of the hold, loading being done practically at the same time. One layer of logs would be put in, shoved all the way in the coal bunker, and then the coal gradually worked down between the logs, then more logs and on and on that way. A great many of these long logs were placed in the hold, in fact in that hold, but on the deck were placed the greater number, as I remember it, of the long lengths of logs.

Q. That is the only way they could have been accommodated, by taking that out?

A. By taking that out, which caused considerable delay in the loading of that hatch.

Q. Do you remember when the steamer "Hellas" went to Cotabato?

A. I do.

262 Q. When?

A. On the 31st day of October.

Q. Were there any logs on the beach loaded in lanchons at the time of her departure, ready to complete the filling of the contract?

A. There were. I remember that very well having referred to my notes of the loading after the "Hellas" returned.

Q. Do you know why she went to Cotabato?

A. I do.

Q. Why?

A. The "Hellas" went to Cotabato as a result of an appointment made by Mr. Seitz and Mr. Payne with Mr. Kidwell, the owner of a sawmill, they having made the appointment by cable, sent from the loading place to Zamboanga, and from there to Cotabato, designating the date for arriving. I know that from being on the spot myself, and knowing — was transpiring.

Q. Upon the return of the "Hellas" from Cotabato, how much lumber had she taken on board from Cotabato?

A. That I have knowledge of—from what was told me by Mr. Seitz, I think—No, I take that *that* back, I do not remember.

Q. How long was she away?

A. Away during 7 days.

Q. During that 7 days could you have loaded the logs?

(McDonough:) Objected to.

(Court:) Objection overruled.

(McDonough:) Exception.

A. Undoubtedly we could have. In fact I was opposed to their going, as I wished to finish the job up and get it over with.

Q. Do you remember, Mr. Bedding, how much lumber
263 they had from Cotabato on board the "Hellas" upon the return of the "Hellas"?

A. Yes, 250,000 feet of sawn lumber.

Q. Where was that lumber on board?

A. Part of it was in "1" hatch, "3" and "4" hatch, I believe. Quite a large amount was piled up on the deck, level with the bulwarks.

Q. State whether or not it was necessary to move, or change the situation of, or stow, any of that Cotabato lumber after the return of the "Hellas" to Buluan Island?

A. It was necessary.

Q. How long did it take to handle and re-stow that lumber from Cotabato?

A. (Referring to notes). November 8th worked in hatch "4," did not begin until 10 A. M., owing to the necessity of changing part of the Cotabato cargo. November 11th, about one-half day. In this hatch, "4," was stowed lumber from the deck, and five workmen and Mr. Zorns were employed. November 12th all day Zorns worked 8 of our men, placing deck lumber in "4" hatch. Did not finish, at least another day's work to complete this task. This all referring to Cotabato lumber that was stowed on deck.

(COURT:) That had to be stowed in order to continue the loading of the logs?

A. Yes, sir. November 13th, worked all day at "4" hatch, with 10 men, still stowing in this hatch the deck cargo brought from Cotabato. Worked until 9 P. M., at night, at which hour the job was finished.

(YEAGER:)

Q. How many days did you say the ship was absent from Buluan?

264 A. She left on the afternoon of the 31st of October, and she arrived from Cotabato on the 7th of November, dropped anchor at 5 o'clock, P. M., almost an hour of 7 days.

Q. You are familiar with labor conditions in the Moro Province and the labor employed, are you not?

A. I am.

Q. Are you familiar with the kind of men usually employed as stevedores in the More Province?

A. I am.

Q. State whether or not the stevedores and laborers used by you, used in loading the "Hellas" with this cargo of Pagatpat logs, were as competent men, competent stevedores as could be procured in the Moro Province?

(McDONOUGH:) Objected to as immaterial.

(COURT:) Objection overruled.

McDONOUGH:) Exception.

A. The men employed by us in this work were as competent a batch of men for this work as could be found in the Moro Province, undoubtedly, as a great many of them were old employees of the Company who had taken part in similar work from time to time, for 7 or 8 years, or since we had been in the business.

Q. Did the "Hellas" suffer any damage during the loading?

A. She did.

Q. What was the nature of that damage?

A. She had quite a number of her stanchions in her different holds and hatches, that separated the between decks, broken, and one or two, I have fogotten which, ladders were broken; snapped off by logs. Also the main guy cable that stayed the foremast
265 broke, and at the same time the main foremast itself buckled, the buckling of that foremast being the most serious and being assumed the most expensive damage that occurred.

Q. How did this damage occur?

A. The main mast became buckled, as I have testified, through that cable which stayed the mast, breaking, and the weight of the log which was suspended over the hatch, and the extra strain brought a greater pressure on the mast than it could bear.

Q. And the stanchions?

A. The stanchions were broken during the period of the work, by being pulled out by using them as posts to carry the chain around to drag on the log with the wench. In the first place I can illustrate that——

Q. Did I not understand the strain broke it?

A. A log fell in "1" hatch, which was caused by the breaking of a chain, fell a distance of 5 or 6 feet, striking against the ladder that leads from between the decks down to the bottom of the hatch, and snapped that ladder off, or broke it off, close to the bottom of the hatch. One stanchion and the ladder were broken by the fall of that log caused by the breaking of the chain which suspended it.

Q. Whose chain was that?

A. Ship's chain.

Q. Upon the return of the "Hellas" from Cotabato, approximately how many logs were on the beach at Buluan Island ready to be loaded?

A. Logs that were to be put on board on the contract, were 41, and which were subsequently loaded, there were a great many logs on the beach but not logs that were to be loaded.

266 Q. How many of these 41 logs were marked?

A. 34.

Q. By whom were they marked?

A. By Mr. Seitz and Mr. Payne, or rather by a Filipino boy who marked them under their direction.

Q. When were they marked?

A. They were marked in the time, during the period in which Mr. Payne and Mr. Seitz reached Buluan Island, until the date on which Mr. Seitz fell sick, which was four days I believe before the "Hellas" left, after which time they marked no more logs.

Q. Do I understand from that, that these logs had been marked before the "Hellas" went to Cotabato?

Q. They had. That work of marking was continuous, you understand, more or less logs being brought in from the woods and Mr. Seitz going ashore and inspecting them.

Q. How many men did you have working on this pagatpat contract in October?

A. I cannot answer that from memory. I have my notes on

that, but I can approximately. The month of October we had the greatest number of men on the work, and it ran up to 125 or 130 any way, but if that is a matter of importance I can get the record.

Q. Can you approximate the number of men, at the present time from memory, employed on this work in September?

A. No I cannot. I can say that the first month the fewest amount of men were employed, June; in July there were more; and it increased until October when the greatest amount of men were employed. In November it fell back again to a few men, but I cannot approximate.

Q. Do you know where the "Hellas" went after leaving
267 Buluan Island?

A. She came to Zamboanga.

Q. Do you know where she cleared from Zamboanga?

A. She cleared from Zamboanga for the port of Shanghai, China.

Q. And she did not clear for Tangku Bar?

A. She did not.

Q. Do you know when navigation closed on the Peiho River?

A. I do approximately.

Q. When?

(McDONOUGH:) Objected to as being immaterial.

(COURT:) Objection sustained.

(YEAGER:) Exception.

Q. Was the matter of the closing of the Peiho River by ice during that fall, discussed by you and Mr. Payne?

A. It was discussed on board the ship between the Captain, Mr. Seitz, Mr. Payne and myself at various times, as it was feared by Mr. Seitz, that getting so late in the season that if we suffered very many delays we would get there too late to unload at Tonku Bar, and if it proved to be so, he would be put to a very large, extra, expense to unload elsewhere.

Q. What else was said at that conversation?

A. During this conversation we consulted frequently the sailing direction for the China Coast, a copy of which the Captain had on board. He said that——

(McDONOUGH:) Object to what he said as being incompetent.

(COURT:) Objection sustained.

(YEAGER:) Exception.

—. And further more in those conversations and talks, once at least, Mr. Seitz stated that if it was not for the fact that he was committed to go to Cotabato, he would cut that trip out for
268 fear it would cause too much delay and endanger the unloading of the logs at Tangku Bar.

Q. Did the Plaintiff Company have anything at all to do with that Cotabato trip or the logs obtained on that trip?

A. Absolutely nothing.

Q. The Plaintiff Company had no interest in the Cotabato Lumber Company?

A. No.

Q. It had no interest in the boat's going there?
A. None whatever.

(McDONOUGH:)

Q. You said that the trip which was made my the "Hellas" to Cotabato, was arranged for while the "Hellas" was at Buluan Island?
A. I made that statement, yes.
Q. That is based on the fact that they sent the telegram, the cable. from Buluan to Zamboanga, from there to Cotabato to Mr. Kidwell?
A. I said the date of the arrival of the "Hellas" at Cotabato was fixed by cable. The date of the arrival.
Q. You are positive now, that you did not say it was the cause of the boat going to Cotabato, that is the arrangement between Mr. Payne and Mr. Seitz and Mr. Kidwell by cable?
A. I am not sure, but if I did, I did it unconsciously, as I am well aware that the arrangement for the trip was made before the "Hellas" arrived at Buluan.
Q. Did you go with them?
A. I did not.
Q. You do not know what they did, do you?
269 A. Only what they told me *me.*
Q. As I recall it, you said the "Hellas" arrived there about October 7th?
A. From Cotabato.
Q. The first arrival at the loading station, when it first came here, what was the date?
A. October 14th.
Q. Now previous to that date of the arrival of the "Hellas", had the defendant Company ever asked that the boat be allowed to come earlier than that date. from your Company?
A. I cannot remember that they did, but I remember there were a lot of letters written by Mr. Payne urging us to hurry and get ready.
Q. When was that?
A. I think that was, possibly, the latter part of August or the early part of Sentember. I am not positive.
Q. Did Mr. Payne give you any reasons as to why he wanted you to hurry and get ready?
A. My recollection is, that he quotes this other man as hurrying him.
Q. Do you remember what the reasons were?
A. No I do not except that he was anxious to get his lumber.
Q. Don't you remember that Mr. Payne urged upon you, that is upon the Plaintiff Company, the necessity for haste for the reason that navigation in the port of China to which he was taking the logs would be closed by ice if haste were not used?

(YEAGER:) Objected to as not calling for the best evidence.
(COURT:) Objection overruled.
(YEAGER:) Exception.

270 A. If any of Mr. Payne's letters contained reference? No, with reference to ice, no.

Q. Do you remember any of the reasons which he urged upon you for haste. Which Mr. Payne urged upon your Company for the necessity of haste in filling that cargo?

A. The only reasons he urged, were that the China people were anxious and sent their ship over to get the lumber, but in as much as our contract period was not up until October 1st, why, we did not consider that they had any right to push us in the month of August and September.

Q. In other words you were relying on the fact that you had until October 1st, in which to prepare that cargo?

A. Not absolutely.

Q. Then what do you mean by your answer that because you had until the 1st of October, you did not see any reason for haste?

A. We saw no reason for added haste on account of Mr. Payne's letters, in as much as the time—for the reason we had a month or more according to the period in which we were to complete the contract.

(COURT:) That is the contract between the China people?

A. No, the written contract between the Defendant and the Plaintiff.

(McDONOUGH:)

Q. Now the Defendant Company herein, were anxious that cargo be ready for shipment on the 1st of September, were they not?

A. I believe the contract states to be ready September 1st, as I understood Mr. Payne's contract with Mr. Seitz, but that no penalties were to run against Mr. Payne's Company in favor of the China Company until after the 1st of October.

271 Q. You were not ready to deliver on September 1st, were you?

A. Not at all the logs, no.

Q. You were not ready to comply with the contract, Exhibit "B" for the Defendant Company, on September 1st, 1910?

A. I cannot swear that positively. We may have been able to have done so had the ship come in then.

Q. Well, don't you know?

A. Not positively. We had a vast amount of logs at that time.

Q. And were you not in charge of the work?

A. I was.

Q. And still you don't know.

A. We might have begun loading on the 1st day of September and very possibly could have continued loading, kept it up.

Q. Was your company, the Plaintiff Company here, prepared to comply thoroughly with the contract on the 1st day of September, 1910?

A. No, I do not think we were ready.

Q. Was your Company ready on the 15th day of September, 1910, to comply with that contract, to fulfill that contract by deliv-

ery of the logs called for therein, on the 15th day of September, 1910?

A. On the 15th day of September, I believe it would have resulted just the same as it did had the ship come in, and no more than on the 1st.

Q. Were you ready on the 30th of September, 1910, to comply with that contract by delivery of the logs?

A. Upon that date all of the logs that were afterwards loaded,
were not on the beach, as they were not on the 14th of Oc-
272 tober when the ship actually appeared, but we could have
kept that ship with logs alongside and completed the contract, as we did complete it, had she appeared there the 1st day of October.

Q. What is the earliest date at which you could have commenced delivery of the logs alongside the ship to be loaded on board, and continued to deliver them there, so that the work could have continued?

A. The first of October, I believe is the earliest date.

Q. Answer my question, were you prepared on the 30th of September to deliver the logs called for by the contract, Exhibit "B", to Defendant Company?

A. We were with what logs we had on the beach.

Q. How long would it take you to bring the logs out of the mangrove to put on the ship?

A. I cannot tell that exactly.

Q. Were you not on the work?

A. But you are asking me how long it would have taken?

Q. Did you not testify yourself, that you went into the mangrove, that you personally took charge of the bringing of the logs from the mangrove?

A. I did answer, once.

Q. And still you say now, you do not know how long it will take to bring these to the boat?

A. I certainly do say it will take time.

Q. You do not know how long it will take?

A. I know how long it did take.

Q. I am asking you——

A. But you are asking me how long it would have taken?

Q. Now, how long, from your experience from being on the job,
would it have taken to have brought these logs from the
273 mangrove to the beach after the 1st of October?

A. With the force then employed it would have taken about three weeks, with the force then employed. Afterwards employed, rather from the time the ship arrived, about two weeks instead of three weeks.

Q. Now, I understand you to say, that it would have taken about two weeks from the time the ship arrived, to have brought in the balance of the logs under contract, Exhibit "B"?

A. Yes.

Q. How long would it take after the arrival to put on board these that you had there ready to be delivered?

A. These would if——
Q. Answer me that.
A. Two weeks.
Q. Then by the time those were aboard you would have had the others ready to continue loading?
A. We undoubtedly would have.

(COURT:)

Q. In other words, you would not have been able to get them aboard the ship any quicker by having them on the beach?
A. No.

(McDONOUGH:)

Q. But it required part of the men that you had there doing the loading to go to the mangrove and get the logs, did it not?
A. No, because when the loading commenced, we brought out mill crew up to assist in the loading, and most of the men still remained in the mangrove, if not all of them the greater part of them.
Q. But these 125 orr 130 men that you mentioned, were the mill men also?
A. Yes.
Q. You had them to aid in the loading?
A. Yes.
Q. And you took part of them to the mangrove to bring in the logs?
274 A. No.
Q. What men did you take?
A. The same men that had been used.
Q. So that that ship if it had arrived on the 1st of October would have been just as long as it was delayed when it arrived on the 14th?
A. I do not admit that it was delayed by any lack of logs.
Q. But didn't you say that with the logs you had on the 14th it would have required two weeks to load, and another two weeks to bring logs from the mangrove?
A. No.
Q. What did you say?
A. You asked me the question, How long it would have taken to get these logs, and I answered two weeks.
Q. But did you not answer to the Court's question that it would have required two weeks to have loaded the logs that you had there on the beach, and during those two weeks you could have brought in more?
A. Yes.
Q. So that you would have required two weeks after the 14th of October in order to have brought in sufficient logs to fulfill the contract, Exhibit "B"?
A. The Court understands.
Q. Answer my question.

A. Without adding to the amount in equipment it probably would.

Q. And so that as I understand your testimony now, it would have required until the 28th of October for you to have complied, to have had ready for delivery the logs called for under Exhibit "B" of the Plaintiff Company?

(YEAGER:) Objected to as being argumentive, and assuming facts which are not shown in the evidence.

(COURT:) Objection overruled.

275 (YEAGER:) Exception.

A. That—I will answer that question. Yes, under the same conditions and with the same equipment and the same success as attended the actual loading of the logs, which did occupy us the last two weeks.

Q. Now I will ask you if it would have been the same if you had not had them?

A. It could have been done in less time had we increased our equipment by employing more men and another launch.

Q. But you have also said that would have taken about two weeks to have brought all of the logs that were in the mangrove up to the loading point?

A. I believe most of these answers have to be qualified by me. The time employed, this two weeks I spoke of as being necessary to get these logs from the mangrove to Buluan Island, was the time actually employed, as I remember it now, to get the logs to Buluan Island, that were not there when the "Hellas" arrived. Now, had the "Hellas" arrived the 1st of October, realizing that it would have been difficult for me to get these logs in in time, and kept up loading continuously, the equipment would have been augmented by getting another launch, the same launch that we had on the work at one period, more men, and more effort would have been made by increasing the equipment.

Q. What has caused you to remember now, definitely, that it took two weeks?

A. The fact that we were employed that time. The "Hellas" got there on the 14th and commenced to load on the 15th I believe. That was when the launch was in employ off and on, bringing those logs in until the "Hellas" left for Cotabato, the 31st of October, therefore these days were remembered.

Q. So that you state now, positively, that it required two
276 weeks to bring the logs from the mangrove to the loading point that were not on the beach when the "Hellas" arrived?

A. Yes.

Q. You remember definitely?

A. I remember there were two weeks occupied.

Q. You remember that definitely, now?

A. From the time the "Hellas" arrived until the "Hellas"——

Q. You remember that definitely, now?

A. Yes, I do.

(COURT:)

Q. Had the "Hellas" arrived on the 1st of October could you have commenced loading then?

A. We could have, yes.

Q. You had logs to put on board, on the beach?

A. Yes.

Q. Could you have continued it. Could you have continued putting those logs on the steamer until it was finished?

A. We could have, I believe.

(McDONOUGH:) Object to the answer and ask that it be stricken out as an opinion of the witness.

(COURT:)

Q. Was the fact that all of the logs applying upon that contract were not on the beach at the time that the "Hellas" arrived, did it in any way delay the loading of the ship?

A. It did not for a moment.

(McDONOUGH:)

Q. You say it did not delay it for a moment, upon what do you base that?

A. I base it in large, upon what I saw myself, being there most of the time, and on the record also as shown by notes kept by Mr. Williamson, which I have here.

(McDONOUGH:) Then I ask that that answer be stricken out as not being competent.

277 Q. And on notes by Mr. Williamson also?

A. With regard to a few times that I was absent from there, yes.

Q. Now when did you first go to the loading point?

A. I was there when the ship came in.

Q. Did you stay there?

A. As I have testified, I stayed there with the exception of two or three trips out to the mangrove when I accompanied the launch.

Q. Now, you said you were there when the "Hellas" came, do you mean came from China or came in from Cotabato?

A. Came in from Zamboanga.

Q. Had they gone to Cotabato, as yet?

A. No, not on the 14th of October.

Q. In your testimony you stated that you went there and stayed there continuously after the return from Cotabato?

A. Yes.

Q. Previous to the time that it went to Cotabato and reurned during the time that it was at the loading point, you were not out——

(YEAGER:) Object as having been answered. The witness having repeatedly stated what time he was gone.

(McDONOUGH:)

Q. During the time previous to the ship's going to Cotabato and during the time that it was at the loading point, from the date of its arrival, October 14th, you were at times at the beach where the work, the loading was going on and at times away from there?

A. From that immediate point, at times.

Q. How many days during the period from the 14th of October were you absent from where the loading was going on?

A. I should say it would not exceed three days.

Q. Which three days were these?

A. I cannot specify.

Q. Can you say that they were three days immediately following the arrival of the boat, or the last three days before the boat went to Cotabato?

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A. They were not consecutive, the three days that I was absent.

Q. Have you anything to base that statement on, as to its being three days, or is that just your remembrance?

A. It is my recollection. I have no notes on that.

Q. How many contracts have you filled for logs, during the time you have been in this business?

A. I cannot answer that off hand.

Q. Can you say that there has been one contract?

A. There has been.

Q. Has there been 10?

A. I do not think it would be 10.

Q. Can you state to me now, any other particular contract that you have had for logs and the loading of the logs on board?

A. A contract with the Philippine Railway Company for the supplying of a number of piles, pagatpat piles, to be used by them. Two distinct contracts, one of 2000 piles and the other of 1000 or 1200.

Q. With regard to dimensions, these last as compared with the logs in contract, Exhibit "B", how do they compare?

A. The piles for the Philippine Railway Company being much smaller in diameter, the specifications, I believe, being not less than 8 inches at the point and 14 inches at the bottom. I believe that was the specification and we kept within this dimension.

Q. When was that contract?

A. The latter part of 1907 or the early part of 1908.

Q. Did you personally supervise that?

A. I was not present on the work all of the time, no, but I was on the ship while she was loading.

Q. Did you take any part in the loading?

A. The ship was loaded, the actual supervision of loading the ship was by the ship's officers.

Q. In other words, did they bring men with them to do the loading, the ship itself, at that time?

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A. The logs were brought alongside in lanchons, and the wire was attached, pulled aboard, put inside the hold and the ship's crew stowed them.

Q. On that contract all that you people did was to bring the logs alongside the boat?

A. That is all we did, and attach the cable.

Q. Do you remember any other contract besides that, during all of your experience wherein the logs were loaded by you people on the steamer?

A. Yes, I remember loading 50 logs, I believe sent to Cebu, about two years ago, loaded at Port Banga.

Q. Who loaded these?

A. Our Company; that is our Company supplied the logs.

(COURT:)

Q. Who loaded them on the ship.

A. The ship loaded them.

Q. Who was to load the logs in this case, you or the ship?

(McDONOUGH:) Objected to as the contract shows that.

(COURT:) Question withdrawn.

(McDONOUGH:)

Q. At the time of this loading at Buluan Island, under the contract, Exhibit "B", did the ship's officers and crew assist in loading?

A. They did. The ship's officers and some of the crew.

Q. Do you know where Tongku Bar is?

A. I have a very good idea.

Q. Where is it?

A. It is in China, a few miles up the Peije River.

Q. How far from Shanghai?

A. You got me on that. I do not know.

280 Q. You do not know whether it is near Shanghai, or far away from Shanghai?

A. I might approximate.

Q. But you do not know?

A. I should say it was several hundred miles.

Q. Interior?

A. No up the coast, that is, Tongku Bar being up the coast from Shanghai.

Q. And that is the place that was mentioned in the conversation which you and Mr. Payne and Mr. Seitz and the Captain of the "Hellas", had on board the "Hellas"?

A. Tongku Bar?

Q. Tongku Bar?

A. Yes.

Q. And that was the place they were going to?

A. As to where the logs were to be unloaded? According to Mr. Seitz with his contract with these people.

Q. These men who assisted you; did the men that you employed to load this lumber; would you call them stevedores?

A. I would not designate them by that title, no.

Q. How long would you say the delay was altogether, caused to

the steamship "Hellas", caused by the breaking of the chains, tackle, etc. on board the "Hellas" during the loading of the logs?

A. By lack of proper pagat-pat logs?

Q. No, by reason of the breaking——

(YEAGER:) Objected to as being incompetent, the witness having testified as to many causes.

(COURT:)

Q. Can you answer that question?

A. I can answer that question lumped, as to the day's delay caused by all of these things I have testified of.

Q. How much?

281 A. I should say there was a week's delay caused everything I have mentioned in my testimony; by everything I have mentioned.

(McDONOUGH:)

Q. I ask what the witness means by lump delay?

A. By lump delay. By lack of sufficient equipment to handle the heavier logs, which caused delay; by the equipment not being sufficiently strong and continually breaking, thereby causing a delay in fixing up and arranging new and other tackle; by the work required in "2" hold, in removing these coal bunkers and distributing the coal therein; by the prohibition on the part of the Captain to allow more than two hatches to be worked at the same time; by the delay caused by the necessity of removing and stowing in the hold of the steamer "Hellas" that part of the Cotabato cargo which was on deck when it returned from that port to Buluan Island; and I should say the delay caused by these various things would lump up to one week at the least. Had it not been for that it could have been loaded one week earlier.

Q. Might it have been 12 days, as much as 12 days?

A. No, I do not think it would have been.

Q. Might it have been as much as 11 days?

A. I do not believe it would have been.

Q. But it would not have been less than 7 days?

A. No.

Q. You say by lack of equipment. What do you mean by lack of equipment?

A. By lack of having some mechanical appliance to haul around these heavy logs when placed in the hold.

Q. Had you ever seen heavy logs like these loaded before?

A. Yes. Not as heavy as these, no.

Q. What mechanical appliance would you suggest?

A. On one of the boats, I believe it is, they have a fixed

282 pulley in one of their hatches, attached to the bottom of the hold, whereby they can run a cable, a wire, from their winch down and around that and attached it around the log and pull it in place. That is one appliance.

Q. Is that the only one you ever saw of that kind?

A. That I ever saw, yes.
Q. When did you see that?
A. I saw that on board of one of the — boats, I have forgotten which one, a matter of two or three years ago.
Q. You do not know whether that ever turned out to be practical?
A. It was practical.
Q. At that time and subsequent?
A. I do not know subsequent to that date, but I do know that it materially aided in stowing those logs at that time.
Q. Did they have any mechanical appliance aboard the "Hellas"?
A. To be used in stowing the cargo below, absolutely none.
Q. Did they have any mechanical appliance aboard the boat at all?
A. They had winches.
Q. Did they have tackle?
A. They had tackle, some.
Q. Now when this boat went from Buluan Island to Cotabato did you go with it?
A. I did not.
Q. You do not know what occurred aboard that boat?
A. No, except as told me by those aboard when they returned.
Q. You were present when "2" hatch was loaded?
A. Not the entire time.
Q. What part of it?
A. After she came back from Cotabato, I was here all the
283 time while this hatch was being loaded and before she left a portion of the time.
Q. Was "2" hatch loaded before or after?
A. A portion of the cargo was put aboard "2" hatch before she left for Cotabato, something like, according to my list, something like 27 logs were put there in the hatch, or on the deck by the side of the hatch after she came back.
Q. So that you don't know whether there was anything put in the hatch when she came back?
A. I certainly do know logs were put in the hatch when she came back.
Q. How many?
A. After the "Hellas" returned from Cotabato, there was placed in "2" hold, according to my notes which I have just consulted of the loading, 17 logs, and in between decks in that hatch 2 logs, and on deck, placed on deck at that hatch, 3 logs.
Q. Do you know the condition of that hatch when she left the loading poing to go to cotabato?
A. Yes, I was there before the ship left.
Q. What was the condition? Was it full?
A. No, it was not full.
Q. How near full was it?
A. Well, it was not within 17 logs of being full, because they were placed in there after she had returned.

Q. So you state that it was not full when she went to Cotabato, because you were able to place 17 logs after she returned?

A. That is about right.

Q. Do you know how many days were actually consumed in loading the "Hellas"?

A. At Buluan?

Q. Yes, I mean in loading these logs?

A. 25 days.

284 Q. Are you sure it was not 26 days?

A. I am quite sure from my notes and my memory that it was 25 days.

Q. But you would not say positively that it was 25 days?

A. Yes, I would say it was 25 days.

Q. When did she go to Cotabato?

A. She went to Cotabato the 21st.

Q. When did she return?

A. On the 27th.

Q. When did she finish that cargo?

A. On the afternoon of the 15th of November. But from that number of days must be subtracted from three o'clock in the afternoon of November 15th, when she completed loading; and the 31st when she left for Cotabato, she left in the afternoon.

Q. And when did she arrive at Buluan, in the morning or afternoon?

A. At Buluan in the morning, but did not take a stick aboard until the next morning, the 15th.

Q. How many Americans did you have to assist you in loading?

A. One.

Q. Was he the same one they called "Windy"?

A. Yes.

Q. As I have here in my notes, you stated on your direct examination, that after the arrival of the "Hellas" at Buluan, and work was started, up to the time she went to Cotabato, that you were present at that loading only about half of the time, whereas on cross-examination you have stated that you were absent about three days?

A. I do not think I testified half of the time. My recollection is that I testified that I was there most of the time, that I made two or three trips away for the purpose of bringing logs in.

Q. Did you not testify on your direct examination, that, "I was there", referring to Buluan Island, "about half of the time,

285 because I made several trips to places for logs, I was not there constantly but I was there quite frequently?"

A. I do not remember "half of the time". I do not recollect having testified so. I recollect saying a greater part of the time.

Q. Would you say now you were not there half of the time?

A. I was there more than half of the time.

Q. You say that all the logs were loaded on the boat, as I understand, and more logs, more pieces than are called for under the contract?

A. There were.

Q. Now to have the record show if any of these logs that were loaded aboard the "Hellas", they were not to all apply on the contract, were they?

A. All of the logs that were loaded were to apply on the contract?

—. ——.

A. Not all.

Q. Part of these logs were under a separate agreement between you and Mr. Seitz?

A. Between our Company and Mr. Seitz, yes.

Q. You said two or three of the lanchons were loaded with logs and had to return from the boat because the boat could not take them?

A. I do not think I specified the number but owing to a sudden squall some were sent ashore temporarily.

(YEAGER:)

Q. You state if you had had more men and equipment in the mangrove you could have gotten out more logs, gotten them out more rapidly?

Q. I referred to getting them from the place they were cut to the Island, where the ship was loading.

Q. State whether or not there was sufficient equipment and men in the mangrove to get out the logs with sufficient rapidity to keep the "Hellas supplied with logs to load?

A. There was, so much so that the logs upon arriving at the Island were unloaded upon the beach, and had there been
286 any scarcity they would have been brought alongside, but there being plenty of logs on the beach these logs were discharged on the beach.

Q. Then there was never any necessity for putting more men——

(McDONOUGH:) Objected to as calling for a conclusion.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

A. Never.

(COURT:)

Q. That necessitated two handlings, putting them on the beach and then on the boat?

A. Yes.

I certify that the above is a true transcription.

(S'g'd) HARVEY A. M. BATH,
Official Stenographer, Fourteenth Judicial District.

287 This case came on for further hearing at Zamboanga, December 12, 1911. Those present were: Judge Chas. A. Low, Mr. James F. Yeager of the firm of Yeager & Gibbens, Attorney for the Plaintiff Company, and Mr. Chas. A. McDonough of the firm of Gibbs & McDonough, Attorney for the Defendant Company.

Mr. McDonough, Attorney for the Defendant, now moved for

a continuance of the case, filing with his motion: Telegram marked Exhibit "1", Answer to telegram (copy) marked Exhibit "2", and Telegram marked Exhibit "3", all for the Defendant Company.

The Court denied the motion for continuance.

(McDONOUGH:) At this time I offer in evidence the questions and answers in the deposition of Mr. Seitz, objected to heretofore by the plaintiff, being 13, 14, 15, and 16 of Seitz's Deposition. I offer this evidence to rebut the proof of the Plaintiff as to his expense in connection with getting out the lumber and loading the same.

(YEAGER:) Objected to as immaterial and irrelevant.
(COURT:) Objection sustained.
(McDONOUGH:) Exception.

The witness FRANK ZORNS, having been duly sworn, testified as follows:

(YEAGER:)

Q. State your name.
A. Frank Zorns.
Q. Where do you live?
A. Bangan.
Q. Moro Province?
A. Moro Province.
Q. What is your age?
A. 49.
Q. What is your occupation?
A. Foreman in the sawmill of the Port Banga Lumber Company.

288 Q. Were you employed by the Port Banga Lumber Co. during the year 1910?

A. I was.
Q. Were you in their employ at the time the Steamer "Hellas" came to Port Banga and Buluan Island to load logs for China?
A. I was.
Q. Did you remain there during all the time the "Hellas" was there?
A. At Port Banga?
Q. At Port Banga and Buluan?
A. I left Banga and went to Buluan as soon as the "Hellas" arrived at Banga.
Q. And you were in Buluan all the time the "Hellas" was there?
A. All the time.
Q. Both before she went to Cotabato and after she returned?
A. All the time. Not at Buluan. I went to Cotabato on the "Hellas" and returned to Buluan.
Q. And remained there until the "Hellas" left?
A. Yes.
Q. Did you have any duties to perform with reference to the loading of these pagatpat logs in question on board the "Hellas" at that time?

A. The stowing of them in the hold?
Q. The stowing of them in the hold?
A. Yes, sir.
Q. State to the Court in a general way what those duties consisted of?
A. To transfer the logs from the lancans when the lumber got along side the "Hellas" and stow them in the hold.
Q. You were foreman in charge of that work?
A. I was the foreman in charge of No. 3 hatch.
Q. Who was in charge of the other hatches?
A. The first a man by the name of —. Mr. Williamson was in No. 1 hatch; I do not recollect the foreman's name in No. 2 hatch, I was No. 3 and a person by the name of — in No. 4, but
289 afterwards that was changed.
Q. When the "Hellas" arrived at Buluan Island, can you state approximately how many logs were on the beach there at that time?
A. According to the numbers that were given to me there were over 300.

(McDonough:) Object to that and ask that it be stricken out as hearsay.
(Court:) Motion to strike out granted.

(Yeager:)

Q. State of your own knowledge?
A. I did not count the logs.
Q. After the "Hellas" anchored at Buluan Island within what time were the logs along side in lancans ready for loading?
A. The logs were along side the same day?
Q. From the time the lancans with logs were along side until the "Hellas" left, state whether or not there were logs in lancan along side ready for loading during that time?

(McDonough:) Objected to as leading.
Question withdrawn.

(Yeager:)

Q. State whether or not there were logs at the loading place in Buluan for loading during all the time the "Hellas" was there?
A. Yes, sir.
Q. State whether or not there were logs on the beach at Buluan ready for loading during all the time the "Hellas" was there?
A. All the time.
Q. State whether or not there was any delay caused in loading the "Hellas" on account of a lack of logs at the loading place?
A. Never.
Q. State what was the condition of the "Hellas" with regard to tackle and blocks and chains and gear, used to load logs of
289 this kind?

(McDonough:) Objected to as immaterial and incompetent

under the issues of the case, and on the further ground that the witness is not qualified to answer.

(COURT:)

Q. Do you know anything about ship's tackle.
A. Yes, I do.
Q. How do you know anything about it?
A. I have loaded and unloaded ships for the last 14 years in the Quartermaster's Department, United States Army, and in the service of the Port Banga Lumber Company, handling tackle on land and aboard.

(COURT:) Objection overruled.
(McDONOUGH:) Exception.

A. She was not competently stayed to load her hatches.

(YEAGER:)

Q. Just describe to the Court her condition with reference to tackle, blocks, chains and gears, etc.?
A. Well, I was assigned in the beginning to No. 3 hatch. To load that—in order to load No. 3 hatch they had to take logs and lower them and put them in the hatch with an old winch. I had to work on that winch in which it was dangerous. Then I was transferred to No. 4 hatch, where they had to haul up the long logs and had not sufficiently heavy tackle, blocks and cable it seemed to me to lower them without any danger to my men below, so they cha-ged the boom tackle on No. 3 according to my idea, and I went to work on that and we hoisted away on it and hoisted on No. 4 hatch, but the chains were continuously breaking, the blocks were continuously breaking, the wire was giving out and No. 4 winch gave out. The masts were not sufficiently stayed to resist the strain on the foremast. They had to put to prevent, what they called a "preventer," a stay down under the posts, a wire to the foremast at the bow to support the mast. The ship had two masts on the back and they put tackle on each side of the masts to brace it and to stay the ship. That was done by No. 4 when you used No. 3. If you
291 wanted to use No. 4 you had to take all that tackle and put it on the forward end on the far side of the main mast to stay that mast to use No. 4 hatch.
Q. When you speak of them you mean?
A. I mean the officers of the ship.
Q. Approximately how many men were used on board the "Hellas" by you in handling these logs?
A. 40 men.

(McDONOUGH:) Objected to and calling for an opinion of the witness and as being incompetent and immaterial.
(COURT:) Objection sustained.
(YEAGER:) Exception.

(YEAGER:)

Q. How many men were employed by you on board the "Hellas" to handle these logs?

A. 40 men per day; 10 men on each hatch.

Q. State from your experience you have had in loading cargo of this kind, whether in your opinion that was a sufficient number?

A. Sufficient number, yes sir.

Q. What was the cause of the breaking of these tackles, chains, gear, etc.

A. Old.

Q. Were they sufficiently strong, in sufficiently good condition to load and handle these pagatpat logs in question?

A. No, sir, they were not.

Q. Were any logs lost through the breaking of chains?

(McDONOUGH:) Objected to as immaterial, incompetent and irrelevant.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

A. One.

(YEAGER:)

Q. In loading any of the logs into the hold of the ship was any of the tackle broken?

292 A. Yes, sir, tackle on No. 1 hatch.

Q. Did you notice whether or not the mast, or either one of the masts was buckled or bent in loading these logs in question?

A. I did, sir.

Q. What mast or masts?

A. The main mast. It happened on No. 3 hatch.

Q. Were you or the Plaintiff Company delayed in any way in loading or stowing this cargo by the breaking of the ship's tackle?

A. I could not load any ways near as fast as I could if the tackle had been good.

Q. During the time the "Hellas" was there did you always have men on board the "Hellas" ready to continue the loading?

(McDONOUGH:) Objected to as leading.

A. Yes, sir.

Q. How many hatches were loaded at a time?

A. Never more than two at a time.

Q. Why were not all four hatches loaded at once?

A. They could not be on account of the insufficiency of the hoisting gear. The hoisting gear was not sufficiently strong nor the masts were not sufficiently strong to use. I can explain that better if I show you the way the masts are situated.

Q. State to the Court——?

A. The foremast was used as the main stick for the No-. 1 and 2 holds. The mainmast was used as the main stick for No. 3 and

No. 4 holds. If you used No. 1 hold you could not use No. 2, because they had to put the tackle back there to support the mast. The same way if you used No. 2, they would have to put the tackle forward of the mast to support it and make it sufficiently strong to put the logs in No. 2 hold. The same thing applies to No-. 3 and 4 with the main mast. They had to stay it.

Q. Do I understand the foremast is situated between the No-. 1 and 2 holds?

A. Yes, sir.

Q. And the main mast is situated between No-. 3 and 4?

293 A. No-. 3 and 4 hatch-.

Q. Was any objection made by the Defendant Company or its agents, or the ship's officers, to the loading of the four hatches at one time, that you know of?

(McDonough:) Objected to as calling for an opinion of the witness, it not being shown that he had any knowledge of the subject, also as being incompetent and immaterial.

(Court:) Objection overruled.

(McDonough:) Exception.

A. There was an objection made by the Captain of the ship. None by the Port Banga Lumber Company at all.

(McDonough:)

Q. Mr. Zorns, did I understand you to state that you went to Cotabato with the ship?

A. I did, sir.

Q. Did you do any work aboard there?

A. I restowed No. 2 hatch.

Q. By restowing No. 2 hatch, you mean to say that you restowed the pagatpat logs that were in there?

A. I restowed the pagatpat logs that were loaded on board at Buluan.

Q. Now when you left Buluan Island No. 2 hatch was full was it not?

A. No, sir.

Q. How near full?

A. Logs were there, in any way.

Q. You could get more in?

A. Yes, sir.

Q. How many more?

A. I do not recollect the exact number put more than 20 more.

Q. Yes, but at the time she left Buluan Island?

A. No, sir, not at the time we left.

Q. And at the time that you restowed?

A. After we got to Cotabato I loaded there.

Q. What I mean to say is that you were employed on board that ship to restow No. 2 hatch?

A. Yes, sir.

294 Q. You were so employed on the trip were you not?

A. After we got to Cotabato.

Q. And after you restowed it, how much space was there?

A. Space, well, as much again. I wish to state that the Chief Officer of the "Hellas" restowed No. 2 hatch.
Q. And you assisted?
A. No, sir, he stowed it.
Q. Di- you do any work there?
A. Not No. 2 at Buluan.
Q. Did you do any work on board the boat on the trip to Cotabato?
A. No, sir, not on the trip.
Q. Did you do any work at Cotabato?
A. I did, sir.
Q. What work was that?
A. Restowed No. 2.
Q. Did you not say the Chief Officer restowed that?
A. No.
Q. Did you not just a moment ago state——?
A. No, sir, I did state he stowed No. 2 at Buluan.
Q. Did you not state that there were two other men employed at stowing?
A. At first they were in charge of these different hatches, one for each hatch, but afterwards that was turned around.
Q. Who was the man who had charge of No. 2 hatch at Buluan?
A. The Chief Officer.
Q. Who of the Port Banga Lumber Company had charge of that?
A. None of them.
Q. At any time?
A. That I know of.
Q. Did the Port Banga Lumber Company never load No. 2 hatch?
A. Not that I know of.
Q. They could have?
A. I could have.
Q. You could have in the first place?
A. Yes, sir.
295 Q. But you are not able to state whether they were able to stow that hatch or not?
A. I do not know.
Q. Now, Mr. Zorns, what experience have you had?
A. About 14 years.
Q. The No. 2 hatch when you got through restowing it was only half full?
A. When we got through, yes, sir.
Q. Then when you went back to Buluan you put more logs in No. 2 hold?
A. Yes, sir.
Q. Was there any other hatch restowed?
A. Yes, sir.
Q. What one?
A. There was No. 1 and No. 4 hatch, were both restowed.
Q. But when they left Buluan they were full?
A. No, sir.
Q. But they were, in the manner that the logs had been put in they were full?
A. No, sir.

Q. Was there room for more?
A. Yes, sir.
Q. How much more?
A. Room for—I cannot say how many logs but there was sufficient room to receive the logs that the "Hellas" received at Cotabato after making room for the same.
Q. But they were restowed to make room?
A. Yes, sir, to make room for the logs that were received at Cotabato.
Q. How much room was there after they were restowed?
A. There was room to receive 25,000 feet of——
Q. How much room was there for pagatpat logs when they left Buluan?
A. The equivalent space to take up 25,000 feet of lumber.
296 Q. Will you state to me in simple language about how much of the hold was left unfilled?
A. How simple language do you want?
Q. Was it full, or half full, or quarter full.
A. It was more than half full, somewhere more than three-quarters.
Q. These logs were large logs?
A. Some of them.
Q. Were not most of them large?
A. There is a question about large logs. We call large logs 20 feet or over and according to a certain diameter. What do you mean by large logs?
Q. What was the general condition of this cargo of pagatpat logs, were they not all large logs, 20 feet or over?
A. No sir.
Q. Were the majority of them over 20 feet?
A. No, sir.
Q. The majority of them were under 20 feet, is that it?
A. Yes, sir, the majority of them were under 20 feet.
Q. They were not what you would call heavy logs?
A. They weighed all the way from four-and-one-half to eighteen and one-half tons.
Q. The logs under 20 feet did they weigh up to that many tons?
A. Over four and one half tons.
Q. How much would the logs under 20 feet weigh?
A. They would weigh different weights.
Q. Well, give us an average for them?
A. Well I could not average them at all because when in the hoisting of the logs on board Mr. Seitz or Mr. Payne would come to see these and say how many tons they were. I do not remember.
Q. Well you have remembered——
A. But I do know that the short logs were hoisted in No. 4. The Captain was supervising for the hoisting.
297 Q. In No. 4 hatch, which of the logs were lowered in there, the longest ones or the short ones?
A. The longest ones were not lowered in No. 4 hatch, but the longest ones were lowered in 1.

Q. That you say when she left Buluan was more than three-fourths full, when she left Buluan for Cotabato?

A. About three-fourths full.

Q. Was it not more than three-fourths full?

A. I said about, I do not know.

Q. Can you tell whether it was more or not?

A. I can only say about three-fourths. I could not say whether it was more or not. The Captain had charge of the hold but I should say three-fourths full.

Q. Now, what logs were there still on the beach to load, were they big logs or small logs?

A. They were large and small.

Q. Now, with that hatch three-fourths full how could — have put in the large logs?

A. No, we did not put large logs there.

Q. And No. 3?

A. That, when we left Buluan was full as far as the capacity for the logs were concerned.

Q. Did you restow that hatch?

A. No, sir.

Q. Now No. 1, when you left Buluan for Cotabato, how full was that, to the best of your remembrance?

A. She was a little more than three-fourths full.

Q. Could you have at that time that you left Buluan have loaded any more of the pagatpat logs in there?

A. Sure could.

Q. Is it not a fact that with that hatch three-fourths full there would have been no room to load large logs in there?

A. I cannot tell anything about the large logs.

298 Q. Could you have loaded 20 foot logs?

A. I do not know anything about that.

Q. But you are a man of experience?

A. You asked me if we could load any more logs in that hatch when we left Buluan?

Q. I asked you if you could load more logs in No. 1 hatch when she left Buluan for Cotabato?

A. Yes, sir.

Q. Now when you returned from Cotabato No. 1 was it half full?

A. When we returned from Cotabato it was.

Q. Was No. 3 full when you returned from Cotabato?

A. The lower hold was half full.

Q. Then could you load any large logs in there?

A. We did.

Q. And No. 4 hatch, when you returned from Cotabato how was it?

A. We loaded small logs.

Q. How full was it when you returned?

A. About three-fourths.

Q. Was it the same as when you left?

A. Yes, sir.

Q. You did not restow that?

A. Yes, sir.

Q. When you left Buluan for Cotabato were there any logs on deck?
A. Yes, sir.
Q. Was anything done with them while you were gone?
A. Yes, sir.
Q. Were they still on the deck?
A. Still on the deck.
Q. The last part of the loading was the extra large logs, was it not?
A. They were large logs, some of them.
Q. How many of them?
A. I do not know.
299 Q. How many logs were there about to be loaded when you got back from Cotabato?
A. I do not know.
Q. Can you not give an estimate?
A. No, sir.
Q. You have had how many years' experience?
A. 14.
Q. Have you ever had any experience in loading logs?
A. Since I have been with the Port Banga Lumber Company.
Q. How long has that been?
A. 3 years.
Q. How many ships have you loaded with logs in those 3 years?
A. Four of them.
Q. Were these the same kind of logs?
A. Yes, sir, logs.
Q. Have you ever loaded any ships with logs as large as these?
A. Yes, sir.
Q. Have you ever loaded any ship in the Philippines within 3 years with this kind of logs?
A. Pagatpat, yes, sir.
Q. When?
A. The first trip of the "Rigel."
Q. With reference to the loading of the "Hellas," did you load any pagatpat logs at any time within that time?
A. Before that time?
Q. Did you load any within a short time previous to the loading of the "Hellas"?
A. Yes, sir.
Q. How long before?
A. Well, within a year.
Q. Is it not a fact that when you left Buluan for Cotabato the lower hold of No. 4 hatch was full?
A. No, sir.
Q. Is it not a fact also that there were some logs between decks?
300 A. Yes, sir, those loaded on No. 2.
Q. I am talking about No. 4?
A. No, sir, not a log on No. 4 between decks.
Q. Now you speak of having 40 men to assist you in loading the hatches?

A. There was only 40 men.
Q. 40 men a day?
A. Yes, sir.
Q. You do not mean there were 40 men for each hatch?
A. 40 men for the "Hellas."
Q. How many other men were employed there, do you know?
A. 3 besides myself that I know of.
Q. Who were they?
A. They were in charge of the different hatches, personally supervising, but they all worked under Mr. Seitz.
Q. And those three men did the work of filling the hatches did they?
A. What do you mean?
Q. Those 3 men you have spoken of, did any of those 3 actually work on the filling of the hatches?
A. Sure they did.
Q. Did any of them work on No. 2?
A. Yes, they worked under the supervision of the Chief Officer.
Q. Did you not tell me a few minutes ago that no one worked on No. 2 but the Chief Officer?
A. In charge.
Q. He was in charge?
A. In charge.
Q. Who was the man who was assisting?
A. Our man.
Q. What was his name?
A. I cannot remember these names. There are 70 men up there working now and I do not remember the names.
Q. He was a foreman was he not?
A. He was the foreman in charge of that gang.
301 Q. But you are unable to remember his name?
A. Yes, sir.
Q. Who was working on No. 1 hatch?
A. Mr. Williamson started loading it first.
Q. How long did he work on it?
A. I do not know how many days.
Q. Estimate as near as you can.
A. I could not make any estimate at all.
Q. Was it 20 days?
A. Mr. Williamson worked on No. 1 hatch from the time the "Hellas" got there until the hatch got so full they would not take any more in.
Q. About how many days was that?
A. Well we got there and started loading the "Hellas" on the 16th of November, October I mean, and we left there on the 30th of October, 5 o'clock in the afternoon, and within that time No. 1 had been filled.
Q. Did Mr. Williamson work on that hatch from the arrival up to the time that they refused to receive more logs?
A. So far as I know.
Q. You do not know whether he did or not?

A. I cannot swear to that.
Q. You do not know how long he worked?
A. I cannot swear to the number of days.
Q. Do you know that he worked on it at all?
A. I do.
Q. How?
A. Because he was working there helping Seitz to count the logs.
Q. What sort of men were those men who were assisting??
A. Natives.
Q. Were they rough material or had they had experience in loading before?

302 A. Well, there were some of them that had had experience, some had been sailors on coastwise boats and others were mountain men, ordinary day laborers.

Q. Would you say they were competent stevedores?
A. I do not know.
Q. How many competent stevedores were there loading that boat, I mean for the Port Banga Lumber Co.?
A. Well, I could not say how many competent stevedores.
Q. Could you say whether there were any?
A .With the gangs of laborers I had I could have loaded the boat in half the time using the four hatches.
Q. Can you say whether there were any competent stevedores employed in that loading by the Port Banga Lumber Co.?
A. Yes, sir.
Q. How many were there?
A. I cannot state now.
Q. Were there three?
A. Yes.
Q. Were there five?
A. There was enough for one man at every winch, and he must be a stevedore.
Q. Was he a competent stevedore?
A. He was a competent stevedore.
Q. Was he a competent stevedore?
A. He was a competent winchman.
Q. You do not know what is meant by stevedoring?
A. Stevedoring on a boat takes in everything.
Q. How many competent stevedores were there employed by the Port Banga Lumber Company for the loading of the "Hellas"?
A. I cannot answer that question.
Q. Can you say that there were any, what I mean is competent stevedores?
A. What do you mean by a competent stevedore?

303 Q. State to the Court what you call a stevedore, what you understand by a stevedore?

A. A man that is able to load specifically under orders.
Q. How many were there?
A. All of them.
Q. Mountain men included?

A. All.

Q. There mountain men, what were they?

A. Men who could obey orders.

Q. And you understood a man who could obey orders to be a competent stevedore?

A. Yes, sir.

Q. Immaterial whether he had ever had any experience before in loading a boat?

A. Immaterial.

Q. In No. 3 hatch, did the tackle break with you?

A. Yes, sir.

Q. How many times?

A. In the first place one shackle pin, caused when two chains broke, and the Captain of the ship had his engineers in the engine room make new booms for the ship.

Q. So that actually the only thing that broke with you were two chains?

A. Oh, no, shackle and shackle pins broke.

Q. How many times did they break?

A. I could not keep count of them they were breaking so often that I could not keep count of them.

Q. So you are unable to say how many times?

A. I am unable to say. Too numerous to mention.

Q. You do not remember specifically how many times?

A. I do not.

Q. Now you say when the "Hellas" got there there were logs on the beach?

A. Lots of them.

304 Q. When the "Hellas" left were all the logs there that were to be loaded?

A. I do not know, but there were lots of logs on the beach.

Q. When you came back did you notice any new logs there?

A. I do not know, I did not see.

Q. In the loading of the ship did you notice whether they were loaded there?

A. Of course we hoisted other logs on the ship.

Q. You do not know how many?

A. I do not know.

Q. Your only work was the hoisting?

A. Yes, sir.

Q. Do you know anything about the accepting of the logs on the boat?

A. Well, I know that I loaded some logs and put them down in the hold and then after they were down in the hold Mr. Payne and Mr. Seitz came and got the numbers of them and said they were rejected logs.

Q. How many were there?

A. I do not know.

Q. Were they many?

A. Several of them.

Q. Might there have been as many as 50?

A. There might have been. It was part of my business also to

check up by this system of numbering they had. Mr. Payne and Mr. Seitz would take and count them and then come up and see my check list and that is the way we found out there were logs on board that were rejected. Two logs had the same number.

Q. How many days were *they* consumed in loading that boat at Buluan?

A. 16th to the 30th and the 7th to the 14th.

Q. How many days after that?

A. 16th to the 30th—22 days.

Q. Did the Port Banga Lumber Company itself have any tackle for loading these logs?

A. We had.

305 Q. What sort of tackle?

A. We furnished ropes and blocks.

Q. That is the only thing you had were ropes and blocks?

A. Yes, sir.

Q. You had no machinery of any kind?

A. No, sir.

Q. Did your ropes break?

A. Sure.

Q. Did your blocks break?

A. No, sir, but these ropes and blocks were used on board the ship.

Q. Did the ship's officers assist in the loading of that boat?

A. They did, yes.

Q. They were used to supervise the hatches, were they not?

A. The Chief Officer, yes.

Q. The others also?

A. There was only one other.

Q. The Captain?

A. Outside of the Captain, the Captain does not work.

Q. Now, as I understand your testimony Mr. Zorns, at the time the boat left Buluan for Cotabato, the holds then were in such condition by reason of the loading that no large logs could have been put in the holds—any one of the holds?

A. You mean large logs?

Q. By that I mean——

A. No. 1——

Q. No. 1 hatch and No. 2 hatch and No. 3 hatch and No. 4 hatch, now, were they in condition that they could have taken any of the large logs when they left for Cotabato?

A. When she left Buluan?

Q. When she left Buluan?

A. No, sir, they were not, the holds were not.

Q. Now you stated, I believe, on your direct examination that there — no delay on account of a lack of logs at the loading

306 place?

A. No delay in loading on account of lack of logs on the beach.

Q. I believe you have stated on your direct examination that you did not know what logs were on the beach?

A. I stated I did not know the number of logs.
Q. You do not know whether they were accepted or rejected?
A. No.
Q. Are you in position to say that at the time you left Buluan for Cotabato that there were any logs on the beach at Buluan which were to go in that shipment of logs from the Port Banga Lumber Company to the Export and Import Lumber Company?
A. I am.
Q. Will you please state what they were?
A. I went ashore with Mr. Seitz and Mr. Payne and they counted the logs there that were accepted and they debated whether it would be best to load these logs before they went to Cotabato or wait until they came back and they finally decided to go to Cotabato and leave these logs there.
Q. What sort were they?
—. Pagapat.
Q. Did you see them?
A. Yes, sir.
Q. Were they large or small?
A. Large.
Q. Now in your testimony did you not answer that you did not see these logs?
A. I do not recollect your asking that question.
Q. I asked you what logs were on the beach and you answered "I did not see them", and then you stated that you did see the logs on the beach at the time you left Buluan for Cotabato?
A. You asked if I know which logs were accepted and which were not accepted?
Q. Do you know how many logs were on the beach when you left Buluan for Cotabato?
A. I do not know.
307 Q. What was the conversation on the beach at the time you went ashore to see those logs?
A. Betwen whom?
Q. Between Mr. Seitz and Mr. Payne?
A. Debate as to which logs should be taken and which should not and whether they should take them or wait until they got back.
Q. These large logs that they decided to leave, they could not have been loaded?
A. They could have by restowing No. 2 hold.
Q. But at the time you left Buluan for Cotabato, they could not have been loaded then?
A. No, they could not.

(YEAGER:)

Q. State to the Court what cargo, if anything, was contained in No. 2 hold when the ship arrived at Buluan?
A. When she arrived which time?
Q. When she first arrived.

(McDONOUGH:) Objected to as not being rebuttal of any testi-

mony brought out at the cross examination or any of the evidence of this case.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

A. When she got there,—when the "Hellas" first got there she had coal—No. 2 hatch contained the coal bunkers and we could not load anything in No. 2.

Q. You have stated it would have been impossible to have loaded these large logs in No. 2 hold in the same condition as when the "Hellas" left Buluan?

A. Yes, sir.

Q. When were these large logs loaded in No. 2 hold?

A. After coming back from Cotabato.

Q. What logs if any were loaded on deck?

A. The very largest, after coming back.

308 Q. I understand the largest logs were loaded on deck?

(McDONOUGH:) Objected to as leading and asking for a conclusion of the witness.

(COURT:) Objection sustained.

(YEAGER:) Exception.

Q. What did you state was the weight of these largest logs?

A. Up to eighteen and one-half tons according to the estimates given me.

(McDONOUGH:) Objected to and ask to have that stricken from the record as hearsay.

(COURTS) Motion to strike out is granted.

(YEAGER:) Exception.

Q. At what distance was the "Hellas" anschored from shore at Buluan.

A. First when she came in she was anchored close in shore, about 200 or 250 yards. Then she pulled out, away out, to nearly three-fourths of a mile, at least.

Q. On this trip to Cotabato, while there whose cargo did the "Hellas" load?

A. Cargo from the sawmill down there at Cotabato.

Q. What men stowed that cargo of the Cotabato lumber Company which was put on board?

A. The men I took down stowed the major portion of it when we came up from stowing the deck load.

Q. Who paid them for that work?

A. The owner of the Cotabato Sawmill.

(McDONOUGH:)

Q. Mr. Redding, what work did he do in regard to the loading of the ship?

A. Mr. Redding did not do anything with regard to the loading of the ship.

Q. You stated there were a number of logs there which were rejected, what became of them?

(YEAGER:) Objected to.
309 (COURT:) Objection overruled.
(YEAGER:) Exception.

A. As soon as it came aboard the ship we left it there.
Q. They sent some of that lumber to the China Export and Import Lumber Company?
A. I do not know.
Q. Was Mr. Redding in charge of any of the hatches?
A. Not on the ship, Mr. Williamson.

The next witness for the Plaintiff Company was duly sworn and testified as follows:

(YEAGER:)

Q. State your name.
A. Jose Joldon.
Q. Where do you live?
A. Jolo.
Q. What is your occupation?
A. I am employed as a cutter of timber.
Q. What is your age?
A. 56 years.
Q. You were in the employ of the Port Banga Lumber Company?
A. Yes, sir.
Q. What has been your occupation for the last 5 years?
A. I was cutting timber.
Q. Were you in the employ of the Port Banga Lumber Company during the entire year of 1910?
A. Yes, sir.
Q. And you were in their employ when the steamship "Hellas" was at Buluan?
A. Yes, sir.
Q. Did you know Mr. Payne and Mr. Seitz?
Q. Yes, sir.

Q. How long before the "Hellas arrived did Mr. Payne
310 and Mr. Seitz arrive in Port Banga or Buluan Island?
A. I do not know exactly but I believe they stayed there about ten or twelve days before the arrival of the boat.
Q. What were they doing there?
A. They were measuring and marking the logs for which they had asked.
Q. And which they bought?
A. Yes, sir.
Q. Where were you when the "Hellas" arrived at Buluan Island?
A. I was at Buluan Island. I was employed in sending logs from the shore to the boat.
Q. You were in charge of that work?
A. Yes, sir.
Q. How many logs were on the beach of Buluan to be loaded on the "Hellas" when the "Hellas" arrived there?
A. 390 logs or more, very near 400.

Q. How many of these logs had been marked by Mr. Payne and Mr. Seitz before the "Hellas" arrived?

A. About 350, but I do not know the exact number. They have marked that number, about 350, not counting the ones they rejected.

Q. Within what time after the "Hellas" anchored at Buluan were there logs alongside in *lancans* to be loaded?

A. The "Hellas" had hardly anchored and the logs were already beside the boat and I was ordered by Mr. Seitz and Mr. Payne to anchor the logs from the boat because there had been some difficulty and he did not do it until the following day.

Q. Did you remain at Buluan until the "Hellas" finally departed for China?

A. Yes, sir.

Q. During the time the "Hellas" was at Buluan Island loading, state whether or not there was any delay on account of a lack of logs on the beach ready for loading on board the "Hellas"?

A. No, never, but Mr. Redding and Mr. Williamson be-
311 came angry at me because there were too many logs out alongside the ship and sent them out too fast.

Q. How many men did you have on the beach there working under you?

A. 28.

Q. During all the time the "Hellas" was there?

A. Yes sir, and at a time I had more than that and later on there were some people who were sick and other- not working but at the end there were 28 working.

Q. How far was the "Hellas" anchored off shore?

A. A very short distance.

Q. Approximately how far?

A. A little—about from here up to the end of the dock (estimated at about 200 meters).

Q. When the "Hellas" finally departed for China how many logs were left on the beach?

A. They left only some of them which they did not want to load any more.

Q. About how many?

A. Nearly 40 in all.

Q. At the time the "Hellas" went to Cotabato were there still logs on the beach ready for loading?

A. There were 27 logs of large dimensions which they did not want to load because they were too large and I was ordered by Mr. Redding to square them up in dimensions of 40 by 40, and I did that while the boat was on its way to Cotabato because the Captain did not desire to load them because they were too big.

Q. And beside the 27 large logs about how many other logs of smaller dimensions were there?

A. They were all of the dimensions they asked for.

Q. How many logs were on the beach left for loading when the "Hellas" went to Cotabato?

312 A. I remember these 27 logs and there were only about 16 or 18 more, I do not remember.

Q. And also all of the logs which they had rejected?
A. Yes, sir, they were left.

(McDonough:)

Q. I believe you stated there were about 390 or 400 logs on the beach when the "Hellas" arrived at Buluan Island?
A. Yes, sir.
Q. And when the "Hellas" left for China there were still 40 on the beach, is that it?
A. Yes, sir.
Q. Was that 350 logs put aboard the ship, all of them?
A. Not only those, because after the "Hellas" was anchored there *there* came other logs.
Q. Where did they come from?
A. From the mangrove.
Q. When did they come?
A. The day after—two days after the "Hellas" arrived.
Q. Now while the "Hellas" was absent in Cotabato, did any logs arrive on the beach from the mangrove?
A. No, sir, we were not lacking logs, there were two many there.
Q. You are sure now that no logs arrived on that beach from the time the "Hellas" left for Cotabato until it returned, you are sure of that?
A. Yes, sir.
Q. If Mr. Redding stated that other logs were brought from the mangrove swamp during that time would he be telling the truth?

(Yeager:) Objected to.

A. I have remembered when the "Hellas" was away there came 4 logs from the mangrove.

(McDonough:)

Q. Were they large logs?
A. Large. They were large logs and it was agreed that the
313 boat was to go and get them from the place where they were.
Q. How many logs were loaded aboard the "Hellas" after it returned from Cotabato?
A. I remember that there were 27 loaded there which I have squared and there were other logs which I do not remember now.
Q. Were they large logs?
A. Yes, sir.
Q. Now you stated on your direct examination that those logs were not put aboard because the Captain did not want to put them aboard, is that true?
A. Because they were too large and not square he did not want to take them.
Q. How do you know that?
A. Because the Captain told me he did not want to load those logs because they were too large. They were 45 by 48 and he said they were too large until I squared them.

Q. Do you know whether or not the boat could have taken them?
A. They tried to load one of these logs and it fell and it sank.
Q. Was there room aboard the boat for these large logs?
A. I was not aboard the ship.
Q. Where did the Captain say this, in your presence?
A. At the shore, he was in the boat and he called my attention to the logs, that the logs were very large.
Q. Did you not load any logs that were larger than 40 inches in diameter?
A. They loaded all of these 40 inches in diameter but they were squared before they were loaded.
Q. They would not take any logs that measured more than 40 inches in diameter, was that it?
A. They loaded those 28 by 40 but those 40 by 45 they did not receive unless they were squared.
Q. These men who were employed under you, these 28
314 men did they work also on board the ship?
A. No, sir, they had enough work on shore.
Q. What was their work?
A. To tow in the logs so as to have them ready when the boat gets in close.
Q. And then when they got along side the boat would they help take it on the boat?
A. They had been towing these logs with wire and they could hoist them in the air and a Chino would unfasten the wires.
Q. Was the Chino from aboard the "Hellas"?
A. Yes, sir.
Q. Then did not your men help on board the boat after they got the wire around the log to pull it up?
A. They returned with the lancans for another load.
Q. And you had 28 men doing that all the time?
A. Yes, sir.
Q. Were they employed all the time?
A. All the time.
Q. And the boat was able to take these logs just as fast as your 28 men could bring them out?
A. No, sir.
Q. How many logs were they able to take a day?
A. 5—7—even 1 a day.
Q. And it would take 28 men to carry out these?
A. Yes, sir.
Q. To bring out one?
A. To take them out to the boat no, but to raise them from the water.
Q. You mean from the water along side the boat?
A. I needed 28 men to take these logs tied between two lancans and to be raised from the water and once we had up the logs it needed four men to take them along side the boat.
Q. And the other 24 would sit on the beach and wait for them to return, is that it?

315 A. There were eight lancans.

Q. Now how many days out of the time the "Hellas" was there did they only load one log?

A. I believe it was one day, but I cannot tell exactly, I had too much work.

Q. What was the average number they loaded per day?

A. Some days they loaded, 4, 5, 6 and the greates- load they took was 7.

Q. Now the "Hellas" was there 20 days was it not?

A. I cannot tell.

Q. If they were there 20 days and the most they loaded was 7, how did you get 390 on board?

A. I was just told of this and so some days they loaded 7.

Q. So you do not know anything about that?

A. I know of my duties of having the logs and sending them along side the ship.

Q. But you do not know anything about how many they loaded a day?

A. I do not know, I was intent on my work.

Q. Answer question, yes or no, do you know anything about how many logs they loaded a day, from your own knowledge?

A. I do not know how much they loaded, but I know of my own knowledge how many logs I had ready there ashore and the logs that were found on the Island, I can answer, but the logs they loaded, I do not know.

Q. Are you sure that only four logs were brought to the beach from the time the "Hellas" left for Cotabato until she returned?

A. I am certain that four logs that were in the mangrove were taken there to Buluan.

Q. But were any more than four brought there?

A. I do not remember.

Q. Until she left for China?

A. From the day she arrived to the day she left there were 15 or 17 in all.

316 Q. Now I will ask you for the number of logs that arrived at the beach at Buluan from the day the "Hellas" arrived on the 16th of October until she left for China on the 13th of November?

A. From the time she arrived, October 13th, to the time she left for China, were 4.

Q. You are sure of that?

A. Yes, sir.

Q. Did you see them arrive?

A. Yes, sir.

Q. If any more had arrived you would have seen them?

A. Yes, sir.

Q. They could not have arrived without your knowledge of it, is that it?

A. Because I had my duty to have that bark taken off.

Q. Now where was Mr. Redding during the time the "Hellas" was there?

A. Generally he was on shore but from time to time he came there to confer with Mr. Payne and Mr. Seitz and inspect the work.

Q. Did he do any work?

A. Yes, he did plenty.

Q. What did he do?

A. He had to direct the work and sometimes he had to go in the launch and inspect the logs.

Q. Inspect the logs where?

A. To see the logs, see that they arrived and to see—he was also on board inspecting them.

Q. So that Mr. Redding's work was to go from the "Hellas" to the shore and from the shore to the "Hellas", is that it?

A. Yes, and to order what was necessary.

Q. Did he go out in the mangroves after any logs?

A. He had no need to.

Q. Were there any launches employed to bring these logs from the shore to the boat?

A. He had a gasolene launch there and the "Banga" and
317 sometimes the "Cosup".

Q. Were they employed to carry logs from the shore to the "Hellas"?

A. While it was necessary because of the waves they were used, if not they were not used.

Q. Was it necessary during the time he was loading to use them?

A. Yes, sir.

Q. How many times?

A. I do not remember.

Q. Once?

A. No more.

Q. Can you state whether it was used one or ten times?

A. I had to attend to—I should say three or four times but I cannot say.

Q. Both launches?

A. I have seen the "Banga".

Q. How many times did you see that used?

A. I seen it, I cannot say.

Q. Do you know whether it was used?

A. Yes, sir.

Q. Was it used ten times?

A. I cannot state about ten, but four or five, yes.

Q. What work did it do?

A. When the waves were very large it was dangerous to take the logs alongside of the boat and sometimes when they got them they would sink.

Q. Could that launch go from the boat into the shore?

A. Yes, sir.

Q. Could it come right up to the shore?

A. To the shore, not very close some places. Yes.

Q. But the "Hellas" was very close to the shore was it not?
A. Yes, sir. But once it was pulled by the waves far. Taken far.

(YEAGER:)

Q. Mr. Redding was in charge of the affairs at the mill was he not?
318 A. Everything.
Q. And he was in charge of getting out these logs and taking them down to Buluan Island, was he not?
A. Mr. Redding was in charge of everything. He was in charge of sending the men out to get the logs and bring them in and he would go there and see them and examine them and see where they were and see where they should be taken. In general charge of that work.

(McDONOUGH:)

Q. Now, how do you know that?
A. Because while I was in charge of the work Mr. Redding has been there and he often brought with him goods and has come there to see what machines we were using and to get logs from the mangrove.
Q. How many days did he pass doing that?
A. More than three moths.
Q. Now in getting out these logs was he employed in there day after day continuously, did he go on the job and stay on it or just come to visit from time to time?
A. While these logs were being cut in the mangrove he went to inspect them but once they were cut and prepared he took them and stayed there day and night, he did not leave.
Q. How many days?
A. More than 35 days and nights, but before that he went there from 3 to 4 days to inspect the work.
Q. Now, you spoke of some logs being left on the beach after the "Hellas" left, what became of them?
A. Those rejected by the "Hellas" were sent to the mill at Banga to be sawn into lumber.
Q. That is the mill of the Port Banga Lumber Company?
A. Yes.
Q. There were 50 of those were there?
A. About 40 something.
Q. During the three months you spoke of Mr. Redding working with you getting out these logs. did all of these logs which
319 were cut during that three months go to the beach for the "Hellas" or some go to the mill?
A. There were sent to the mill at Banga about four, that were got there from that place and the rest were sent to Buluan Island.

(YEAGER:)

Q. The launch which you spoke of as the "Banga" is the launch formerly called the "Mollie B", is that not true?
A. Yes, sir.

Mr. WILLIAMSON was recalled to the stand for the Plaintiff Company and being duly sworn, testified as follows:

(YEAGER:)

Q. Did you have any correspondence with Mr. Payne, President of the Defendant Company, with reference to the kind of boat he should sent down to load these logs in question?

A. I did.

Q. Of what does that consist, what is that? (referring to book handed the witness)?

A. This is the letter copy book of the Port Banga Lumber Company, December 23, 1909 to October 3, 1911.

Q. And that which you are about to read?

A. Is a letter to the Export and Import Lumber Company, Manila, dated July 31st, 1910.

Q. That letter was written by whom?

A. By myself.

Q. As an officer of the Plaintiff Company?

A. As Vice-President of the Port Banga Lumber Company. (Witness reading from letter) "The Export and Import Lumber Company——

(YEAGER:) I will ask that the Defendant Company produce this letter at the present time, this original letter.

(MCDONOUGH:) I object to the motion of the Attorney for the Plaintiff at this time as being too late and not being properly presented as required by law. The Defendant is here from Manila and received no notice that such letters would be required
320 and the motion for the same by the Attorney for the Plaintiff now is without time and contrary to law.

(YEAGER:) I ask the Atttorney for the Defendant if he has the original in his possession at this time.

(MCDONOUGH:) Attorney for the Defendant does not know what letters are required and objects on the further ground that this is not rebuttal to any of the Defendant's proof.

(COURT:) Objection overruled.

(MCDONOUGH:) Exception.

A. (Witness reading from letter referred to:) "The Export and Import Lumber Company, Manila. July 31st, 1910. We sent you today the following cable, 'Choy, Manila. What will it cost for Diekoff to make a trip down here to look over the situation and see if he would be able to or would care to take a logging contract or if he would care possibly to do other work under salary. Pagatpat logs three-fourths net. Final report about middle of August.'

There is something over 100 of these logs at the Island of Buluan loading place. There are more than 100 more cut and already to the water's edge ready to take to the loading place. Buluan, and the balance are reported cut with the exception of 19 logs which have been selected but not yet felled. We cannot be more specific about this matter until the finish of the next high tides which begin about the 5th of next month. We want particularly to call your attention to the weight of the large logs which will be between 15 and 20 tons,

we estimate. Please be prepared with suitable tackle and strong winches to lift these heavy weights. There will be two high waters in August and it is possible that we may be able to be ready by September 1st, but we are not in a position to state this advisedly and prefer to be sure, as something may happen to delay the work."

(McDONOUGH:) I ask that the answer of the witness be stricken from the record on the ground that it is immaterial and in-
321 competent, being a letter written by the witness on the stand.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

(YEAGER:)

Q. That letter was signed by the Plaintiff Company and forwarded by mail?

A. It was.

Q. Turn over in your copy-book, Mr. Williamson, and state if there is another letter written to the Defendant Company on the same subject as this letter.

A. There is.

Q. What is the date of it?

A. August 19, 1910.

Q. That was written by you to whom?

A. Written to the Export and Import Lumber Company.

Q. How was that sent to the Defendant Company?

A. In the usual course of the mail.

Q. I will ask you to read that letter?

(McDONOUGH:) Objected to as calling for incompetent testimony, and as being immaterial under the issues of the case.

(COURT:) Objection overruled.

(McDONOUGH:) Exception.

A. (Witness reading letter referred to:) "August 19, 1910. Export and Import Lumber Company, Manila. Dear Sirs: We sent you this morning the following cable, under Zamboanga: 'We have nothing further to do with it.' Pagatpat logs. Work will be pushed on this during the highest waters. Tides full again August 20. Please bear in mind the weight of these logs and the fact that they can not be moved from place to place by man force and as soon as they are in the hold of the ship and released from the ship's tackle little if any further stowing can be done by men. It is therefore necessary that a ship suitable, be sent, not only for lifting
322 heavy logs but with suitable machinery for stowing. We understand that S. S. Borneo, running between Sandaken and Hongkong, is equipped with steam winches below deck for handling just this kind of cargo. Very truly yours."

(YEAGER:)

Q. State whether or not you had any conversation with Mr. Payne with reference to the point where this S. S. "Hellas" could be loaded.

A. Yes, we discussed it.

Q. What was that?

A. The contract did not say that this cargo was to be put on at any one place. We put it on at the saw mill site at Port Banga, part if he liked; part at the Island of Bangan if he liked; and part at the Island of Buluan if he liked.

Q. But subsequently all the logs were loaded at Buluan Island?

A. Subsequently they were, no, they were not all loaded at Buluan.

Q. But part at what point?

A. Part at the Saw mill.

Q. You were present when the S. S. "Hellas" arrived at Buluan?

A. Yes, I was aboard.

Q. Did you remain on board the S. S. "Hellas" while there logs were being loaded?

A. The major part of the time, yes.

Q. Can you state what took place with reference to the loading of these pagatpat logs on the "Hellas" from the time she arrived up to the time she left?

A. Up to the time she left for Cotabato?

Q. Did you take any notes at the times of the loading of the "Hellas" and what occurred?

A. I did, I took daily notes.

Q. Daily notes?

A. I did.

Q. Have you those notes with you?

A. I have.

Q. Referring to those notes can you state to the Court
323 what took place day by day with regard to the loading of these pagatpat logs?

A. I can.

Q. I will ask you to do so?

(McDonough:) I object and ask if it is testimony in corroboration of the last witness or different testimony.

(Yeager:) It is under the issues of the case.

(Court:) Objection overruled.

(McDonough:) Exception.

A. The Steamer "Hellas" arrived at Zamboanga in the morning of October 13th, the forenoon, and sailed for Port Banga, and anchored there that night. Early October 14th sailed for Buluan. Tried the entrance to the lower channel but could not get in there. Pulled out and went to the upper channel. Anchored before noon and four lancans with logs put out to her——

(McDonough:) Object to this as the witness is reading from the document in his hand, from notes which he states were made by him. If the witness has a memorandum he may refresh his memory, but notes read into the record are not competent testimony.

(Court:) Objection overruled.

(McDonough:) Exception.

—The ship's charter called for hoisting 16 tons——

(McDonough:) Objected to as hearsay and incompetent.

(YEAGER:)

Q. State to the Court what took place day by day in loading the "Hellas", testifying as to what you saw, and refreshing your memory from the notes.

A. In order to lift the weights the ship had extra booms. Not in place but lying on the deck, and it was necessary to rig these booms before work could commence. For this reason no loading was done on the 14th and logs that had been sent out alongside this ship, four lancan loads, were sent back to shore. On the morning of October 15th there was still no actual work of loading done because we
324 were still mounting these few extra spars and arranging their tackle. In the afternoon loading was begun in No. 2 and 21 logs were put on. In the meantime preparation was going on in No. 2, No. 3, and No. 4 taking out stanchions, taking out bunkers in No. 2 where coal was placed. On the morning of October 16th loading commenced very promptly in No. 1 hatch. The second log that we pulled up, one link in the chain close to the hook bent up and this log dropped just as it was over the hold, the big and down, and it was rather a heavy log and shook the whole ship——

(MCDONOUGH:) Objected to as being immaterial.
(COURT:) Objection overruled.
(MCDONOUGH:) Exception.

—Only for the fact that there was a layer of logs already in the hold of the ship more serious damage would have been done the ship——

(MCDONOUGH:) Objected to as immaterial.

—Examination showed this link to be defective and very old. We were then given a new chain and the Captain and the first officer assisted in lowering this log into place. There was no one hurt at this time, but the tackle was rearranged causing some loss of time. On October 16th, this same day, we were notified that the stanchions had been taken out of No. 4 hold and the loading was also begun here, No. 2 and No. 3 holds not yet being ready, as they were still working on the spars for loading the heavy logs in these two holds and the stanchions are not yet taken out in No. 2. On October 17th, also commenced promptly on No. 1 and No. 4, the other two hatches not yet ready. Captain had quite a discussion in the presence of Mr. Payne and myself about the advisability of taking out these stanchions——

(MCDONOUGH:) Objected as being incompetent and immaterial as to what the Captain might have said, even though in the presence of Mr. Payne.

(COURT:) Objection overruled.
325 (MCDONOUGH:) Exception.

—as taking out these stanchions would weaken the ship and once the logs were put in it would not be possible to put them back again. In the afternoon of the 17th, two logs were loaded in No. 2 hold, even though only a portion of the coal bunkers had

been knocked out and some of the stanchions were still in there. On the 17th loading was commenced promptly in the morning in No. 1 and No. 4 holds. The other two holds not yet being ready. On the 17th we are told by the Captain that we will not be allowed to load more logs in No. 1 hold and No. 4 hold on account of the strain on the ship, all the load being at the two extreme ends, therefore we would be obliged to put something first in the middle of the ship before loading any more in the two extreme ends. On October 18th work commenced promptly. Finished stowing what logs were still in the hold left there from the loading the day before. We then brought the gang from No. 2 hold. One fairly big log was hoisted and safely stowed. Then we hooked on to another big log, brought it up and as it was almost over the hold, the stay of the foremast broke and it looked as if all the rigging would come down——

(McDONOUGH:) Objected to as being incompetent and immaterial, being an opinion of the witness.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

—The stay was one, I should judge, I looked at it carefully, it was in fact as big as my wrist, (supporting the mast, from the foremast down to the bow of the boat), about an inch and one-half in diameter. It seemed to be old and worn on examination. I looked at it myself——

(McDONOUGH:) Objected to as incompetent and immaterial, being an opinion of the witness.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

326 —The rope stay was then put on to the mast. This log was lowered into the hold and with one end sticking away up in the air was left that way temporarily, until things could be rearranged. The hook and chain-sling was also bent. The Captain asked if it was possible for him to get more chain in Zamboanga, for more sling, as he was almost sure that was all of the chain he had available——

(McDONOUGH:) Objected as being incompetent and hearsay.

—The standing chain from hatch to hatch, is pieced, causing delay. The Captain also stated that had he had known the kind of cargo he had to handle he would have come very differently prepared——

(McDONOUGH:) I ask to have that stricken out.
(COURT:) Motion to strike out is denied.

—October 19th. It took practically all morning to lower the log that was left standing upright in the hold over night, but lowered it into the hold. The extra spar that was put in order to handle the heavy logs was taken down and a piece sawed off, some ten feet or more, making it shorter. A number of stays were carried over the top of the masts forward to the forward part of the ship. The rig-

ging on each side was absolutely slack, showing that the mast had sprung. I called the attention of the Captain and the mate to the fact that the lead block, leading the wire on the winch was very old and of a very old fashioned pattern, that instead of turning on the sheave the wire was simply sliding over it, that in winding up this wire on the drum of the winch, this leading block began moving from side to side and the wires wrapped themselves up, one of them over the other and did not come out in a line like they should, one along side of the other. The consequence was that in lowering away with these heavy weights the wire would not go in there and come out without jam-ing, having the exact appearance of
327 broken cogs on the winch, and that this was practically caused in the breaking of this guy rope. After these two accidents there was a conference called up forward, Mr. Payne, Mr. Seitz, the Captain and myself, and they decided that it was better in No. 2 hold to put some smaller logs, so that in case of another accident happening like this, that is one of the big logs breaking away, that the impact would not come on the bottom of the ship but would come on these logs that would be placed to receive it, showing how little confidence they had in their rigging. On this day the 19th, the stanchions had been all taken out of No. 2 and No. 3 hold and this is the first day the ship has been really prepared for loading, but we are only allowed to load in No. 2 and No. 3 on account of the weight at the present time being at the far end of the ship and the Captain still calculating there was too much strain to continue to load No. 1 and No. 4 until some lumber had been loaded in either No. 2 *and* No. 3. October 20, loading commenced promptly and was done in No. 2 and No. 3 holds. I would like to state also, in loading these heavy logs in No. 2 and No. 3 holds, from the beginning, that the foremast was right between No. 1 and No. 2 hatches, that there was a winch forward of the foremast for handling cargo in No. 2 hatch, and that in order to strengthen the mast the cable over No. 1 winch was hooked under the combing of No. 1 hatch and hauled taut, that the same was done on the winch aft of the foremast for handling cargo in No. 2 hatch, and on the after part of the ship the same was done, the No. 4 winch was hooked at the combing of the No. 4 hatch and hauled taut to help sustain the foremast. On this day the 20th of October, the Captain insisted that the two foremast winches be hooked up together to try to overcome this jamming of the cable, as here the strain became irregularly placed on the drum of the winch. Some two hours were spent making this experiment and it was finally given up as
328 impossible. After the big log that took so much time to stow had been finally stowed away, the Captain insisted that he should bring up the next log himself, which he did, bringing it up on the deck, laying it across the hatch, taking off the binding, shipping them, trying it again and finally lowering it into the hold, he himself, specifically giving the orders. Loading is proceeding very slowly. October 21st loading continues in No. 2 and No. 3 hatches. After loading one or two logs in No. 2 hatch, he hooked into a rather big log, which was brought up to the surface of the

water. The shackle broke and it went to the bottom. A mark was instantly devised for the same and I kept it on my cuff. Since the very first day lancans loaded with logs came along side and it has been necessary to send them back. On the afternoon of Oct. 21st a very large log came along side, very slowly, and with great difficulty it was safely loaded in the hold. Examination showed (examination by myself), that the shackle pin was bent and that the upper shackle pin was cracked and that several links in the chain were damaged some and also bent and cracked. The second mate said he would not dare use these chains again——

(McDONOUGH:) Objected to as being hearsay and incompetent.

—The Captain says, "Never mind the ship, be careful and go slowly and not kill anybody——

(McDONOUGH:) Objected to as being incompetent and hearsay.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

—October 22nd, there was considerable delay on this morning with the commencing of the work, as a seam had opened in one of the steam pipes to the winches leading to No. 4 winch, which was also connected with No. 3 winch, with no cutoffs. Also it was found
329 that a portion of the anchor chain which was being used as a guy to No. 2 was broken. As this had to be replaced further delay was caused on the forward part of the ship. Also tackle in No. 2 hold was broken trying to force log off of side of the ship, directly under the Captain's supervision. This log that he was trying to haul up he finally gave up and said he would let it be put on the far side to fill up that place——

(McDONOUGH:) Objected to as incompetent and immaterial.
(COURT:) Objection overruled.
(McDONOUGH:) Exception.

—The upper hatch of this ship, the "Hellas," was 24 feet, the hatch below, the between decks hatch, was only 20 feet. These long logs that we got through the upper opening fairly well, very often they would catch on the lower opening which was only 20 feet. When we could not get them through on this, one log stuck, we called Mr. Payne and Mr. Seitz and they agreed that this log could be cut off. It was taken and so hooked up and finally sawn shorter and managed to get in, but considerable delay was caused. Also the chains having given out on this day and there being no other chains suitable on the ship for chain slings, it was decided to use wire rope as slings and this was tried with fair success. In the meantime the bulkheads in No. 2, behind which the coal is, was being taken down by the carpenter and the coal is being distributed. I would like to state at this time what these bulkheads are. One 35 feet. From the forward end of No. 2 to the back bulkhead was only 35 feet, therefore making it impossible to get a 40 foot long in that space except in the near corner where these bulkheads had been knocked out, and as these bulkheads continued to be knocked out

from day to day and the coal distributed in the hold, we continued to fill that, working right across stowing logs. This is in No. 2 hold.

October 23. On October 23rd, the coal in No. 2 was taken
330 from behind the bulkheads by the engine room crew, they now and then helping to distribute, work being delayed until after breakfast. October 24th delay was caused in No. 3 hold on account of the overriding of the upper deck block of the hoisting gear, no loading being done *done* in this hold until 1 o'clock in the afternoon. October 25th loading continued in No. 2 and No. 3. There was some delay owing to the fact that a log practically hauled up, of 37 feet, was objected to by Mr. Seitz, as going in No. 2 hold, as he said this hold could only take the longer logs and he did not want the short logs to be put in there. He then made a list of the logs he wanted loaded in No. 2 that should be sent out at once. He handed it to the mate and I went ashore to see if it would be possible to get these logs. Among this number was No. 292, which at that time, it being low tide, was high and dry on the bank, so not possible to get out. Also No. 293, which was a very big log, it had already been decided should be loaded on deck, and it was very long and very heavy and we nicknamed it "Old Square Face," because it was squared on one end. No. 298, which proved on investigation had already been loaded on the ship. We understood that the steamer was to go to Cotabato after loading, for a few days in order to fill in between the logs with sawn lumber, in other words this sawn lumber was to be used as what they technically call, "broken stone" to fill up the cracks. As we understood it a cable was sent over to the Cotabato people stating that she would leave our place on the 24th. On the 25th nothing further was said about this. No. 314 came along side and an attempt was made to put it in No. 2 hold. This was found impossible after loading it into the hold, wasting hours trying to stow it. It was brought up and put between

decks. The logs in No. 2 hold not being so well stowed as in
331 the other holds on account of the fact that the coal bunkers were in the way, so that it was only possible to load as these bunkers are taken out and the coal is distributed, making the storage there very difficult. Mr. Seitz requested on this day, October 26th, in the presence of Mr. Payne, that certain logs running ten per cent or over in length be sawed off, also that certain logs on the beach that are very large be squared, otherwise, it will not be possible to get the cargo on the ship.

(McDonough:) Objected to ask that it be stricken out as incompetent and immaterial.

(Court:) Objection overruled.

(McDonough:) Exception.

—October 28th No. 3 hatch bent three shackle pins this day. Zorns wanted the First Mate to get better shackle. The First Mate said, "You broke everything on the ship"——

(McDonough.) Objected to as immaterial.

—"You broke everything on the ship," he says to Zorns. We continued in good faith to get these logs off that run the ten per

cent length and continue to do everything we can to push the work along. When the ship first came up to anchor they let off 30 fathoms of chain, approximately, and were very close to shore and very handy for loading. On this day, the 28th, just at sundown, nightfall, we hoisted anchor, got down another anchor, and maneuver around for quite a little while, it being too dusky to see exactly what was going on. Apparently anchorage being changed. I protested to the Captain and he didn't seem to like it at all. October 29th. On this morning it proved that the ship was very far from shore. I should judge about one mile. Although we protested and Mr. Redding came on the ship this morning also protesting, no action was taken to remedy this. October 30th, last night Mr. Seitz was very sick——

(McDONOUGH:) Objected to as immaterial.

332 —. This makes the third Sunday that the men have worked. October 31st, loading as for some days gradually gone on more and more slowly. As No. 1 and 3 and 4 hatch, in which loading has been continued are about full it becomes more difficult to get each log in. The "Hellas" pulls out for Cotabato and the launch comes down to Zamboanga.

(YEAGER:)

Q. During the loading of the "Hellas" when you were around there, was there ever any delay on account of lack of logs on the beach for loading?

A. Never.

Q. Were you able to use any more men on board the boat than you had?

A. No, we had plenty of men.

(McDONOUGH:)

Q. Was Mr. Payne aboard the "Hellas" during all this time you have mentioned?

A. He was.

Q. And he saw all these things which occurred there?

A. Yes, he did.

Q. Now, how many of the logs which you say took so long to put on board, were they on account of this contract between the Export and Import Lumber Company and the Plaintiff Company?

A. Few if any of the logs which went on the ship were not marked by Mr. Payne and Mr. Seitz as working on this contract.

Q. But there was some that were not, is that true?

A. Some logs that were not.

Q. Were there not logs put aboard during the time that you were there, that were not on this contract between the Export and Import Lumber Company and the Plaintiff Company?

A. I have answered yes.

333 Q. What became of them?

A. They were put on the ship.

Q. Did you give them away, what did you do with them?

A. Sold them to Seitz.
Q. How much did you sell them for?
A. I do not know unless I saw the——
Q. You sold them for 40 cents a cubic foot?
A. Some of the smaller logs.
Q. Did you not sell them all?

(YEAGER:) Objected to as immaterial and irrelevant.
(COURT:) Objection overruled.
(YEAGER:) Exception.

(McDONOUGH:)

Q. Did you not sell them to Mr. Seitz for 40 cents a cubic foot?
A. Yes, sir.

(YEAGER:)

Q. How many logs were there that you sold to Mr. Seitz?
A. Unless I had the manifest it would not be possible to answer.
Q. Approximately how many, do you remember?
A. No, not even approximately.
Q. Do you know of your own knowledge whether or not Mr. Payne and Mr. Seitz had bought that lumber of Cotabato previous to the arrival of the "Hellas"?
A. I understood they had.
Q. From whom?
A. I represented at that time, as Williamson Brothers, Redding and Company, acting as agents for the ship "Hellas," and took up the correspondence with the Customs House.

(McDONOUGH:)

Q. Mr. Williamson, the letters which you referred to and read into the record, were letters press copies of the originals to
334 the Defendant Company, were they?
A. Yes.

(YEAGER:)

Q. Do you know for where the "Hellas" cleared when she left Zamboanga?
A. Yes.
Q. Where did she clear for?
A. Shanghai.

(McDONOUGH:)

Q. Mr. Williamson, during the time you were there at the "Hellas" I understand from your testimony the Captain, First Officer, First Mate and Second Mate, were all assisting in this work?
A. They were.
Q. And the sailors too?
A. A few of the sailors.

(YEAGER:)

Q. Examine this document, marked Plaintiff's Exhibit "RS" and state what it is.

A. This is a certificate from the Shanghai Commissioner of Customs stating that the German Steamer "Hellas" entered at the Shanghai Customs House at 11:40 on the 30 of November, 1910, from Zamboanga. and cleared the same day for Tong Ku but did not leave Shanghai until 12:30 on the afternoon of the 2nd of December, 1910.

(YEAGER:) I offer in evidence Plaintiff's Exhibit "RS."

Later, Mr. WILLIAMSON was again recalled to the stand by the Attorney for the Plaintiff Company and testified as follows:

(YEAGER:)

Q. Do you know how many logs were on the bank when the "Hellas" went to Cotabato?
A. By actual count, I do not know.
Q. Approximately how many?
A. I should say logs to be loaded about 15 or 16.
335 Q. How many logs which had been marked and accepted by Mr. Seitz and Mr. Payne were there at that time?
A. All with the possible exception of two or three.
Q Have you any memorandum from which you could refresh your memory?
A. The reason why these logs had not been marked by the Seitz was because he was taken sick and no logs were marked except in the presence of those two.
Q. Have you any memorandum from which you can refresh your memory on that point?
A. I have.
Q. Have you it with you?
A. I have a memorandum made by Mr. Seitz.
(MCDONOUGH:) I object to that.

(YEAGER:)

Q. Was that memorandum made in your presence?
A. It was.
Q. Di- you have knowledge of it as to the facts?
A. I believe it was correct. I did not recheck the notes.
Q. It was made in your presence?
A. It was.
Q. And it is memorandum of the logs which Mr. Payne and Mr. Seitz had to check to from the logs on the beach?
A. It is.

(YEAGER:) I offer this in evidence marked Plaintiff's Exhibit "SS."
(MCDONOUGH:) Objected to as being incompetent, immaterial and irrelevant under the issues of the case.

(YEAGER:)

Q. Have you looked over this memorandum?
A. I have.
Q. Is it correct?

A. I believe it to be with the exception of his statement that the ten logs missing, a couple of these logs being brought in and
336 he not being there to see them on account of his being sick and not able to go off the ship.

(McDONOUGH:) I submit that that is incompetent.
(COURT:) Objection sustained.
(YEAGER:) Exception.

(McDONOUGH:)

Q. Mr. Williamson, this sale by you of the logs to Seitz took place before the "Hellas" left for Shanghai?
A. It did, we had no other recourse.
Q. But about when was it, just before she sailed for Shanghai?
A. I do not know.
Q. But as you remember it now it was just before?
A. Not ten minutes, but after she came to Zamboanga and before she left for Shanghai.
Q. After she completed the loading at Buluan?
A. Yes, sir.

(YEAGER:)

Q. These logs had all been loaded on the ship by mistake?
A. They were marked as accepted with that characteristic mark.
Q. And how did these logs happen to be on board the ship?
A. They stowed them in the hold to take the place of logs unless better logs came. After that was done there was no way for us to get them back.

(McDONOUGH:)

Q. You got your contract directly with Mr. Seitz, did you not?
A. For what?
Q. For the purchase of these logs?
A. I did not know that he said there was a contract.
Q. But that contract was with Mr. Seitz personally?
A. It was.
Q. And you looked to him and not the Export and Import Lumber Company for payment for these logs?
A. We did.

337 (COURT:)

Q. Did they pay you?
A. They did.

Case submitted to the Court.

Zamboanga, P. I., December 12th, 1911.

I hereby certify that the above transcript of the testimony taken by me in the above entitled case is correct, and that it was taken down by me in shorthand and correctly transcribed, and that it

contains all of the testimony taken at said trial, and all of the proceedings.

(Sgd.) HARVEY A. M. BATH,
Official Stenographer, Fourteenth Judicial District.

338 *Exhibits.*

Plaintiff's Exhibit "A" is the same as Exhibit "A" to Amended Complaint.

Plaintiff's Exhibit "B" is the same as Exhibit "B" to Amended Complaint.

Plaintiff's Exhibit "RS" not attached to record.

" " "SS" not admitted.

Defendant's Exhibit "1" is the same as "Exhibit 1 to Deposition of Adams."

Defendant's Exhibit "5" is the same as Exhibit "1" of Defendant's Answer to the Amended Complaint.

Defendant's Exhibit "6" is the same as Exhibit "2" of Defendant's Answer to the Amended Complaint.

Defendant's Exhibit "7" is the same as Exhibit "3" of Defendant's Answer to the Amended Complaint.

Defendant's: Telegram marked Exhibit "1," Answer to telegram (copy) marked Exhibit "2," and Telegram marked Exhibit "3" filed with his motion for a continuance of the case on December 12, 1911, not attached to record.

Depositions of Payne, Seitz, Ramsay and Adams, together with respective exhibits all appear in Part "A" of transcript of record.

The other exhibits mentioned in the evidence follow:

339 PLAINTIFF'S EX. "C."

Export and Import Lumber Co.

Manila, P. I.

Wholesale Lumber Dealers, etc., etc.

Cable Address: Cahoy, etc., etc.

June 11, 1910.

Port Banga Lumber Co., Zamboanga, P. I.

DEAR SIRS: Referring to the paragraph covering the penalty for failure to deliver pagatpat logs under our contract of the 10th instant, in no case will the penalty exceed the F. O. B. value of the undelivered portion of the order.

Very truly yours,

(Sgd.) EXPORT & IMPORT LUMBER CO.,
By WM. W. PAYNE, *Pres't.*

340 EX. "2" FOR THE DEFENDANT.

F. W. Redding, President.
F. P. Williamson, Vice-President and Secretary.

Port Banga Lumber Co. (Incorporated).

Cable Address "Banga". A1 Code.

ZAMBOANGA, P. I., Aug. 26", 1910.

The Export & Import Lumber Co., Manila.

DEAR SIRS: We have just sent you the following cable:

Cahoy, Manila:
Rigel sixty thousand, Lumbayao.

You have probably noted the error in our invoice of July 29" of P180. Kindly give us credit for this amount.

The papers for today's shipment have gone forward under separate cover.

Our books show that you owe us a balance of P24,141.85, this is exclusive of Pagatpat logs on which contract we have given you credit for P5.000. This amount of money and the Pagatpat contract, is we find rather more burden than our small company can afford to carry. Kindly therefore on the receipt of this letter deposit to our credit P12,000. We are having heavy freight bills and Forestry dues to meet with cash payment and the time is here when we must make an extra effort to have the Pagatpat ready, which is only possible if we have money with which to do it. Kindly give this matter your very careful consideration.

Very truly,

PORT BANGA LUMBER CO. (INC.),
By F. P. WILLIAMSON, *Vice-President.*

341 DEF'T'S EX. "3."

The Plaza Hotel.

ZAMBOANGA, MORO PROVINCE, P. I., Nov. 21, 1910.

Messrs. Port Banga Lumber Co., Zamboanga, P. I.

DEAR SIRS: We beg to notify you herewith that the contract which you entered into with us on June tenth, 1910, for the delivery of a certain quantity of Pagatpat logs, has not been executed in accordance with the terms and specifications.

We, therefore, hold you responsible for all losses and — or damages which we suffer through this account.

Yours truly,

EXPORT & IMPORT LUMBER CO.,
By —— ——, *President.*

342 EX. "4," DEF'T'S.

F. W. Redding, President.
F. P. Williamson, Vice-President and Secretary.

Port Banga Lumber Co. (Incorporated).

Cable Address "Banga," A1 Code.

ZAMBOANGA, P. I., July 21", 1910.

Export & Import Lumber Co., Manila.

DEAR SIRS: We received from you this morning the following cable:

"MANILA, July 20".

Banga, Zamboanga:

Pagatpat carbonado libraste sdegnato imposte Shanghai recamaria.

(Sig.) CAHOY."

Meaning: Pagatpat, shall we charter, loading, first day of September? The inquiry comes from Shanghai. Immediate reply required.

We are cabling you today as follows:

"CAHOY, MANILA.

Recargaras Scrittorio Abbeverare Jampanao."

Meaning: Report (of cutting) will be sent as soon as possible, which will probably be about July 28".

We tried to impress on you from the beginning that the hauling out of these logs would be done during the high water. The high tide of the full moon is right on us now (full moon 22").

343 As soon as this high water is over we will cable you what has been done. Please be so good as not to attempt to hurry us, as we will report to you such progress as we are able to make, from time to time.

In this regard we take the liberty of recalling to your mind your promise that as soon as the contract was signed, you would send us a check for P5000.00.

Very truly,

PORT BANGA LUMBER CO. (INC.),

(Sgd.) By F. P. WILLIAMSON, *Vice-President.*

344 EX. "8" FOR THE DEFENDANT.

F. W. Redding, President.
F. P. Williamson, Vice-President and Secretary.

Port Banga Lumber Co. (Incorporated).

Cable Address "Banga," A1 Code.

ZAMBOANGA, P. I., Aug. 2", 1910.

Export & Import Lumber Co., Manila.

DEAR SIRS: Kindly refer to our letter of July 9", in which we asked you for details of the way the pagatpat logs are to be measured. In case you have not done so, please be so good as to send us a copy of the contract, as ours is at the mill and we should like to be in a position to familiarize ourselves with the method of figuring out the contents of the logs also conditions of contract, so that there may be no hitch with the office part of the work. Kindly do this at once.

We have just received your letter of July 30" in regard to steamer reporting at Port Banga Sept. 1", to load the Pagatpat Logs. We think you appreciate the fact that the steamer must report at Zamboanga before proceeding to Port Banga or so we understand it. Also the logs will be loaded at Buluan Island. If it is your intention to call first at Port Banga to pick up material for broken storage, kindly let us know, stating what you want. It was
345 suggested at one time that we saw some whi-e Lauan, if this is needed let us know by wire giving dimensions as we have none sawn at present but plenty of logs.

In regard to new orders, please be so good as to let us have all details before feeling that we are bound in any manner.

Also please bear in mind that we have not signified that we are ready for the ship and there is considerable time to run yet. Also if it becomes necessary to make two loadings of this cargo, we will be put to additional expense, holding the men for the second loading after the work of cutting and preparing is completed.

In regard to your deposit of P10,000, we gave you credit on your current account with us. We consider the Pagatpat an entirely different matter.

We have sent you today the following cable:

CAHOY, MANILA.

Demulcia Tristesse Answer.

BANGA.

This is to help us along with the Logs and will be credited to this account.

We are forwarding your letter to the mill so that they can be in touch with what is going on.

Very truly yours,

PORT BANGA LUMBER CO. (INC.),

(Sgd.) By F. P. WILLIAMSON, *Vice-President.*

346 EX. "9" FOR THE DEFENDANT.

Telegraph Division, Bureau of Posts.

Telegram Received: Manila.
70 PA RN Q 145 A. M. 3rd—6 Paid Com'l. Aug. 3, 1910.

ZAMBOANGA, Aug. 2.10.

Cahoy, Manila: Demulcia tristesse answer.

BANGA.

(Meaning:) Must have deposit of at least 5,000. Answer.

7.00 A.

347 EX. "10" FOR THE DEFENDANT.

F. W. Redding, President.
F. P. Williamson, Vice-President and Secretary.

Port Banga Lumber Co. (Incorporated).

Cable Address "Banga," A1 Code.

ZAMBOANGA, P. I., Aug. 5", 1910.

Import & Export Lumber Co., Manila.

DEAR SIRS: We have just received from you the following cable:

"MANILA, Aug. 4".

Banga, Zamboanga:

Slatinante Diekhoff taquer faltrere aagekreis pagatpat cargaba libraste sdogliare talkerde 200 thousand 2 inch deificado delejamos.
(Sig.) CAHOY."

Meaning: We cannot spare Diekhoff present time. Finance, your telegram to hand, we conform to contents.

Pagatpat loading 15" day of September.
Tenders are being advertised for Guijo, 200,000, two inch. Will you guarantee delivery November, December.
We are sending you the following cable:

348 CAHOY, MANILA.

Garzonear Cojearas Tangido Defisso/We can guarantee to cut. We think we can deliver.

We understand that Pujalte will keep Rigel on this run even if charter is not continued.

Very truly yours,

PORT BANGA LUMBER CO. (INC.),
(Sgd.) By F. P. WILLIAMSON, *Vice-President.*

349 On May 8th, 1912, the record in this cause was received in the office of the Clerk of the Supreme Court of the Philippine Islands.

Thereafter and on May 22nd, 1912, after payment of the docket fee and printing costs, the cause was duly entered on the docket of the Supreme Court of the Philippine Islands under General Register No. 7967.

Thereafter and on January 7th, 1913, defendant and appellant filed its brief in English, filing Spanish copy of the same on January 13th, 1913.

Thereafter and on January 27th, 1913, plaintiff and appellee filed its brief in English and Spanish.

Thereafter and on January 12th, 1914, the cause was duly submitted to the Supreme Court, there being present the following members: Chief Justice Arellano and Associate Judges Carson, Moreland, Trent and Araullo:

Thereafter and on February 6th, 1914, the Supreme Court rendered the following decision in this cause:

350 UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 7967.

PORT BANGA LUMBER COMPANY, Plaintiff and Appellee,
vs.
EXPORT AND IMPORT LUMBER COMPANY, Defendant and Appellant.

Submitted: Jan. 12, 1914.
Decision Promulgated: February 6, 1914.

Decision.

CARSON, *J.:*

The facts in this case, as disclosed by the evidence and found by the trial judge, are substantially as follows:

The plaintiff company was the owner of a sawmill and logging plant near Port Banga, Mindanao, and the defendant company was engaged in the lumber trade in the City of Manila. The two companies had been doing business together for some time, having had dealings with each other aggregating upwards of P100,000. They were on the most cordial terms, and no formal written agreements were ever made between them, their business being transacted orally or by exchange of letters and telegrams, the relations of the two companies finally becoming so intimate that a consolidation of their interests was under consideration. Such were the conditions when in December, 1909, Mr. F. P. Williamson, the vice-president of the plaintiff company, and Mr. W. W. Payne, the president of the defendant company, met in Manila and discussed the
351 terms and conditions of a lumber contract which Payne believed he could secure in China on a profitable basis. The

order that Payne had in view was a very important one, being for a special grade and size of Pagatpat logs, destined for use in the construction of the mausoleum of the late Emperor Kuang Hsu of China. The matter of available woods was discussed, the conversation culminating in an arrangement *do* "do the business together." In March, 1910, Messrs. Williamson and Payne again met at the office of the defendant company in Manila, Payne having just returned from China, where he had gone for the purpose of securing the contract which had formerly been discussed. At this meeting Payne produced a telegram from parties in China calling for logs of certain large dimensions, which he stated could be somewhat reduced. The matter was then discussed in detail, Payne proposing that he would secure the order if the plaintiff company would furnish the logs, and holding out as an inducement that if this contract could be secured and filled other valuable contracts would follow. The former conversation in which it had been tentatively arranged "to do the business together" was referred to, and the interview terminated in a definite and clear-cut oral agreement to undertake the business "on joint account," the defendant company to obtain the contract, secure the best possible price, and arrange for financial assistance, while the plaintiff was to furnish the logs through its Mindanao plant. Williamson returned to Zamboanga, and his company at once commenced the preliminary work of locating and getting out the timber. Payne was successful in securing the China order, and on May 6th executed in the name of his company a contract with the China Import and Export
352 Lumber Company, Limited (Exhibit "A"), whereby he agreed to furnish to the said China company about 40,000 cubic feet of Pagatpat logs of certain specified dimensions and in accordance with other conditions set forth in the contract, at the price of 90 cents, U. S. gold, or P1.80, Philippine currency, per cubic foot. Very soon after the execution of this contract with the China company—about the middle or the end of May—Payne went to Zamboanga and at once began machinations by means of which he succeeded in inducing the plaintiff company to modify the original joint account agreement and enter into a much less advantageous contract, which is attached to the record marked Exhibit "B". He began by suggesting a written agreement, something theretofore unheard of in the dealings between the two companies, giving as his reason for desiring a contract in writing that "the China people had required him to sign." Payne grossly misrepresented the facts as to the terms of the contract with the China company, and repeatedly assured the officers of the plaintiff company that he had been unable to secure a better price for the logs than 55 centavos per cubic foot. Several conversations were had on this subject between Payne and the representatives of the plaintiff company, in which the original joint account agreement was repeatedly referred to and Payne's false statements as to the price obtained by him from the China Company many times reiterated, until finally the representatives of the plaintiff company, relying upon

Payne's false and fraudulent representations, consented to the proposed modification, which was subsequently reduced to writ-
353 ing in the form of a contract of purchase and sale dated June 10, 1910 (Exhibit "B"). The plaintiff company proceeded in good faith to carry out the contract, cut and transported the logs to tidewater at the point agreed upon, and, upon the arrival of the steamer chartered by the China company, entered immediately upon the work with a sufficient force of laborers and adequate equipment, but was seriously hindered and delayed by the defective tackle and equipment carried by the ship. The loading was, however, finally completed, the cargo delivered to its consignee in China, and the agreed price, less certain deductions, paid to the defendant company. The contract lacked but little of completion—was, indeed, practically completed—when Williamson, in the course of a conversation with Mr. Seitz, the representative of the China company, became cognizant of the fraud that had been practiced upon him by Payne. He at once taxed Payne with his deceit, and gave notice of his intention to rescind the fraudulently obtained contract, but permitted the few remaining logs to be placed on board the steamship, and immediately caused this action to be brought, the complaint having been filed in the Court of First Instance of the Moro Province on November 14, 1910, the day on which the loading of the steamer was completed—this being the day upon which the alleged fraud was discovered. Payne's only reply to Williamson's charges of fraud and demand for redress was "that he stood upon the written contract."

The trial judge upon this finding of facts, rendered judgment in favor of the plaintiff company for the sum of P35,140.23,
354 that being the balance due it, as found by him, after annulling the written contract and allowing it a half share in the net profits of the enterprise.

The principal questions, and as we think, practically the only questions raised by this appeal are questions of fact. Does the evidence sustain the finding of the trial judge that Payne and Williamson had an oral agreement or understanding that their respective companies would undertake, on joint account, to procure and to fill the contract for the delivery of certain lumber; that, thereafter, Payne having secured the contract, grossly deceived Williamson as to the terms and conditions under which he secured the contract, and lead him to believe that the price to be paid for the lumber under the contract was 55 centavos per cubic foot, when the fact was that the price was 90 cents, or P1.80; that by means of these false statements and misrepresentations of fact Payne induced Williamson to execute a written contract wherein he expressly obligated his company to perform its part of the joint undertaking for a fixed price, much less than that which it would be entitled to receive under the agreement to secure and fill the contract for "joint account"; and that the plaintiff company did in fact deliver the lumber in substantial compliance with the terms of the written contract, and at the same time in substantially the manner and form

contemplated in the original oral agreement touching the procurement and filling of the lumber contract on joint account.

These findings are all supported by the clear, definite and unequivocal testimony of the witnesses called by the plaintiff,
355 and although a formal contradiction by the manager of the defendant company of the testimony in this regard was read into the record by consent of counsel, we find nothing therein which would justify us in disturbing the conclusions of fact as found by the trial judge, who saw and heard the witnesses testify. As was said in the case of U. S. vs. Benitez, 18 Phil. Rep. 512, "A careful and discriminating trial judge has unequaled advantages to determine the relative credibility of opposing witnesses. In accordance with the rule so often laid down, this court will not interfere with the judgment of the trial court in passing upon the credibility of the opposing witnesses, unless there appears in the record some fact or circumstance of weight and influence which has been overlooked or the significance of which has been misinterpreted."

Accepting the facts thus found, it needs no extended discussion of the law or the facts to sustain the rulings of the trial judge wherein he declined to permit the defendant company "to stand on the written contract" and thus profit by an agreement which the plaintiff company was induced to execute by the false and fraudulent misrepresentation of material and controlling facts by the agents of the defendant company. It is sufficient to say that the question here involved is not the annulment or rescission of a simple contract of purchase and sale on the ground of concealment or misrepresentation by one of the parties of facts touching the anticipated profits or the purposes or objects inducing such party to execute the contract. Alleged misrepresentations or conceal-
356 ment of facts of this nature will not ordinarily be sufficient to justify the rescission of a simple contract of purchase and sale, because in such cases there is, as a rule, no obligation on the purchaser to furnish such information and because further the vendor in such cases will rarely be able to establish that he was induced to enter upon the contract by such misrepresentations or concealments of fact, he, as a rule, having no interest whatever in the prospective profits of the purchaser or the purposes or objects which induce the purchaser to enter upon the contract. (Mecham on Sales, Chap. VI, sec. 1, and cases there cited.) In the case at bar, however, the relation of confidence which existed between the parties, and the oral agreement under which they undertook to secure and fill the Chinese contract for joint account was such as to impose an obligation on both the parties to treat each other with the utmost good faith in all matters relating thereto. In making false and misleading statements as to the terms of the contract with the Chinese company as to the prices secured thereunder, and as to the prospective profits to be anticipated therefrom, the manager of the defendant company was seeking not merely to induce the manager of the plaintiff company to execute a contract of purchase and sale at the lowest possible price, but to induce him at the same time

to forego any rights which he might have acquired under the oral agreement to secure and fill the contract on joint account, and to induce him to accept, in lieu of a half share in the profits, a price per foot for the lumber much less than that to which he would have been entitled under the oral agreement.

357 Much is said in the brief of the appellant as to the alleged error committed by the court below in admitting and considering the evidence touching the oral agreement, and the statements made by the parties prior to and at the time when the written contract was executed. Many authorities are cited in support of the proposition that oral testimony is not admissible to vary or to modify the plain and unequivocal terms of a written instrument. But it is to be observed that there is no question here as to the meaning and intent of the written contract, and no attempt on the part of the plaintiff to deny its execution, or to place a different construction upon its terms than that given to it by the defendant. The contention of the plaintiff company is that the written contract was in fact executed, but that its execution was procured by the false and fraudulent representations of the manager of the defendant company, and should not therefore be held to bind the plaintiff company. All the evidence as to oral agreements, understandings, or representations made at the time of the execution of the written contract or prior thereto which tends to sustain the charge of fraud in procuring its execution was properly admitted, and as we hold, this evidence fully sustains the findings of the trial judge as to the existence of fraud in the execution of the contract.

What has been said sufficiently disposes of the principal issues involved in this appeal, and in regard to the remaining contentions of appellant it must suffice to say that we think they are

358 satisfactorily disposed of in the decision of the court below.

The judgment entered by the trial court should therefore be and is hereby affirmed, with the costs of this instance against the appellant.

It is so ordered.

(Sgd.) A. C. CARSON.

We conform:

(Sgd.) C. S. ARELLANO,
Chief Justice.

" GRANT T. TRENT,

" MANUEL ARAULLO,
Associate Judges.

I do not conform,

(Sgd.) SHERMAN MORELAND,
(Associate Judge.)

359 On the 17th day of February, 1914, the defendant and appellant filed a petition asking for a rehearing, which was denied by the Supreme Court in resolution dated the 2nd of March, 1914, which resolution, however, granted to the defendant and ap-

pellant a period of ten days in which to file a written brief in support of its claim that, even accepting the general principles laid down in the decision of the Supreme Court affirming the judgment of the trial court, nevertheless, the amount adjudicated in said decision was excessive, and also granting to the plaintiff and appellee a period of five days in which to present its answer to said brief, the same to be counted from the date on which the brief of the appellant was presented.

Thereafter and on the 6th day of March, 1914, the defendant and appellant filed the following exception:

(Heading and Title Omitted.)

"Comes now the defendant and appellant in the above-entitled cause, through its undersigned attorneys, and, without prejudice to presenting the brief mentioned in the resolution of the Court dated the 2nd of the present month, duly excepts to the decision rendered on the 6th of February, 1914, affirming the judgment of the trial court in this cause, and against the order of the 2nd of the present month of March denying the motion for a rehearing presented by the undersigned attorneys."

(Sgd.) "GIBBS, McDONOUGH & BLANCO,
Attorneys for Defendant and Appellant.

360 UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 7967.

PORT BANGA LUMBER CO., Plaintiff and Appellee,
vs.
EXPORT & IMPORT LUMBER CO., Defendant and Appellant.

Motion for a New Trial.

Decision Promulgated Feb. 6, 1914.

March 27, 1914.

Decision.

CARSON, *J.:*

Upon due consideration of the written briefs of counsel we are of opinion that our decision in this case directing the entry of judgment affirming the judgment entered in the court below should be modified by reducing the amount of the judgment entered in the court below by the sum of P8,750, being one half the amount, which "by special agreement of counsel, made in open court, it is admitted" was deducted from the full contract price, "in pursuance of an agreement between the Defendant Company and the China Export and Import Lumber Co. Ltd."

We think that it is perfectly clear that upon appellee's general theory of the transaction, which was upheld in our decision it was error on the part of the trial judge to base his calculation of the net profits of the transaction upon an assumption that the amount of the gross profits was the contract price for the logs actually delivered. The amount actually received was P17,500 less
361 than the contract price, as appears from the stipulation of counsel set forth at page 95 of the stenographic notes. In the absence of evidence tending to disclose that this deduction was made fraudulently, or with purpose to secure an unfair advantage by one of the parties to the joint undertaking, we think that the estimate of net profits by the trial judge must be corrected in this regard. Counsel for appellee offers to prove, if given an opportunity, that this deduction from the contract price alleged to have been made by way of compromise of a claim for damages, was in fact done fraudulently and with intent to injure his client. It is to be remembered however that judgment was rendered upon his theory of a joint undertaking upon which appellee relied throughout the proceedings both in this Court and the court below, and that not only was no evidence tending to sustain a finding of fraud in making this deduction introduced in the court below, but on the contrary, an express stipulation was entered into by the parties in open court admitting without qualification that the deduction had in fact been made. Clearly appellee has no ground upon which to base a prayer for another opportunity to offer evidence as to this item.

As to the P5,000 which appellant claims to have advanced on the joint undertaking, we think that the weight of the evidence sustains a finding that the plaintiff company did in fact credit this money to the account current between the parties; and that the defendant company tacitly consented to its application in this way rather than to the joint-undertaking account. And in any
362 event, it does not appear that appellant suffers any real injury by the placing of this amount in the current account rather than in the joint-enterprise account.

As to the contentions of appellant touching the admission or rejection of the various items of the expense accounts of the parties to the joint enterprise, it is sufficient to say that the attention of the court was not properly invited to this matter by the assignment of error or otherwise when the case was submitted on appeal, and the evidence being conflicting, we decline to enter upon a review or revision of the action of the trial court in this regard upon a motion for a rehearing. If appellee suffers as a result of this ruling, it can attribute its loss to its fraudulent attempt to overreach the plaintiff by the execution of the written contract.

The petition of appellant for a rehearing and a new trial is denied, but the decision heretofore filed in this case is hereby amended so as to direct the modification of the judgment entered in the court below by reducing the amount thereof by the sum of P8750 and affirming the judgment thus modified, with costs against the appellant.

It is so ordered.

(Sgd.) A. C. CARSON.

We Conform:
(Sgd.) C. S. ARELLANO, *Ch. J.*
GRANT T. TRENT,
MANUEL ARAULLO,
Associate Judges.

363 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

No. 7967.

PORT BANGA LUMBER CO., Plaintiff and Appellee,
versus
EXPORT & IMPORT LUMBER CO., Defendant and Appellant.

Comes now the defendant company and appellant, through its undersigned attorneys, and excepts to the resolution of this Honorable Court of the 27th of March, 1914, denying its petition for a rehearing and a new trial.

Manila, P. I., March 31, 1914.

(Sgd.) GIBBS, McDONOUGH & BLANCO,
By C. A. McDONOUGH,
Attorneys for Defendant and Appellant.

(Copy of this exception sent to counsel for other party.)

Filed in the Supreme Court at 3:30 p. m. March 31, 1914.

364 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

File No. 7967.

PORT BANGA LUMBER CO., Plaintiff and Appellee,
versus
EXPORT AND IMPORT LUMBER COMPANY, Defendant and Appellant.

Judgment.

April 3, 1914.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 6 day of February, A. D. nineteen hundred and fourteen and Mar. 27, 1914.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Zamboanga, dated the 27

day of January, nineteen hundred and twelve, and from which the above-entitled appeal was taken, be, and the same is hereby modified, reducing the amount thereof by the sum of P8,750, and affirming same in all other parts, with the costs of this instance against the appellant.

It is further ordered that the plaintiff recover from the defendant the sum of P40.60, as costs.

(Sgd.) V. ALBERT,
[COURT SEAL.] *Clerk of the Supreme Court of the Philippine Islands.*

MANILA, P. I., September 8, 1914.

I certify that the foregoing is a true and correct copy of its original on file in my office.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk Supreme Court, P. I.

365 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

No. 7967.

PORT BANGA LUMBER CO., Plaintiff and Appellee,
vs.
EXPORT & IMPORT LUMBER CO., Defendant and Appellant.

Exception to Judgment.

Comes now the defendant in the above entitled action and excepts to the judgment of the Supreme Court of the Philippine Islands confirming the decision of the trial court and its refusal to reconsider said decision and gives notice that the defendant will appeal therefrom to the Supreme Court of the United States and will prepare the necessary pleading and perfect the same as required by law.

Manila, P. I., April 8, 1914.

(Sgd.) GIBBS, McDONOUGH & BLANCO,
Attorneys for the Defendant.

Filed in the Supreme Court at 12:25 p. m. April 8, 1914.

366 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

[Stamped:] Clerk's Office, Supreme Court, Philippine Islands, 5 p. m., Apr. 7, 8, 9, 1914.

No. 7967.

PORT BANGA LUMBER CO., Plaintiff and Appellee,
vs.
EXPORT & IMPORT LUMBER CO., Defendant and Appellant.

Petition for an Appeal.

The above named defendant, conceiving itself aggrieved by the judgment made and entered on the 2nd day of April, nineteen hundred and fourteen, in the above entitlee cause, does hereby appeal from the said judgment and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record proceedings and papers upon which said judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Appellant further prays that the judgment be superceded upon the giving of a supersedeas bond in such sum as this Court may fix.

Manila, P. I., April 8, 1914.

GIBBS, McDONOUGH & BLANCO,
Attorneys for Defendant and Appellant.

367 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7967.

PORT BANGA LUMBER CO., Plaintiff and Appellee,
vs.
EXPORT & IMPORT LUMBER CO., Defendant and Appellant.

Petition to File Amended Assignment of Errors.

Comes now the defendant and appellant in the above-entitled cause and respectfully requests permission to file the attached amended assignment of errors in lieu of the original one heretofore filed with its petition and prayer for an appeal to the Supreme Court of the United States.

Manila, P. I., May 28, 1914.

GIBBS, McDONOUGH & BLANCO,
Attorneys for Defendant and Appellant.

Permission prayed for above granted this 14th day of June, 1914, the petition having been submitted June 13, 1914.

[Seal Corte Suprema, Islas Filipinas.]

A. C. CARSON,
Associate Justice Supreme Court Philippine Islands.

Baguio, P. I., June 14, 1914.

368 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7967.

PORT BANGA LUMBER CO., Plaintiff and Appellee,
vs.
EXPORT & IMPORT LUMBER CO., Defendant and Appellant.

Amended Assignment of Errors.

The defendant prays an appeal from the final decree of this Court to the Supreme Court of the United States, and assigns for error:

I.

The Supreme Court of the Philippine Islands erred in affirming the decision of the Trial Court overruling defendant's demurrer to the amended complaint.

II.

The Supreme Court of the Philippine Islands erred in affirming the decision of the Trial Court overruling the objections of counsel for defendant to the evidence of an oral agreement preceding the execution of the written contract.

III.

The Supreme Court of the Philippine Islands erred in affirming the decision of the Trial Court finding that the parties entered into an oral joint account agreement previous to the execution of the written contract.

369 IV.

The Supreme Court of the Philippine Islands erred in affirming the decision of the Trial Court declaring null and void and rescinding the written contract of June 10th, and in reviving and declaring in full force and effect in its stead the alleged previous oral joint account agreement.

V.

The Supreme Court of the Philippine Islands erred in refusing to allow defendant's counter-claim for P17,500.00.

VI.

Assuming the existence of the alleged joint account venture the Supreme Court of the Philippine Islands erred in allowing the alleged expenses of the plaintiff in connection therewith without ordering those of the defen*ad*nt to be ascertained and allowed and in rendering any money judgment against the defendant without first returning the case to the court of first instance for a liquidation of accounts between the alleged partners.

VII.

Assuming the existence of the alleged joint account venture the Supreme Court of the Philippine Islands erred in allowing the alleged expenses and damages of the plaintiff in connection therewith (*a*) because the expenses incurred constituted the plaintiff's contribution of capital to the alleged joint account venture (*b*) because a large portion of the alleged expenses were incurred in getting out logs which were not delivered under the alleged joint account contract but were kept and disposed of by the plaintiff for its own use and benefit and (*c*) because the alleged damages suffered by the plaintiff and included as expenses are remote
370 and speculative and not chargeable in any event to the alleged joint account venture.

VIII.

Assuming the existence of the alleged joint account venture the Supreme Court of the Philippine Islands erred in refusing to make any allowance to the defendant for the P5,000.00 advanced to the plaintiff on account of the logs of the alleged joint enterprise.

IX.

Assuming the existence of the alleged joint account venture the Supreme Court of the Philippine Islands erred in refusing to make allowance to defendant for the expenses incurred by it in connection with the business of the alleged joint enterprise.

X.

Assuming the existence of the alleged joint account venture the Supreme Court of the Philippine Islands erred in making allowance to plaintiff as expenses for many items which should not be charged to the account of the alleged joint enterprise.

XI.

The Supreme Court of the Philippine Islands erred in rendering judgment in favor of the plaintiff and against the defendant.

Wherefore defendant and appellant prays that said decision, judgment and decree be reversed and judgment rendered in its favor, with costs.

Manila, P. I., Mar. 28th, 1914.

GIBBS, McDONOUGH & BLANCO,
Attorneys for Defendant and Appellant.

371 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

#7967.

PORT BANGA LUMBER CO., Plaintiff and Appellee,
vs.
EXPORT AND IMPORT LUMBER CO., Defendant and Appellant.

The Clerk of the Supreme Court of the Philippine Islands:

Heretofore, to-wit on the 20th of April 1914, a petition for a writ of error in the above entitled cause was denied by the undersigned, counsel for petitioner having intimated in the oral discussion had thereon that he was satisfied he was not entitled thereto.

Nevertheless, in full consideration of the petition of counsel for defendant for the allowance of an appeal to the Supreme Court of the United States of America, dated the 8th day of April 1914, it is ordered that an appeal to the Supreme Court of the United

372 States from the final decree and judgment heretofore filed and entered herein, be, and the same is hereby allowed; and that a certified transcript of the record, testimony and all proceedings had herein be forthwith transmitted to the said Supreme Court of the United States of America, upon the filing by petitioner of a supersedeas bond in the sum of twenty thousand dollars, U. S. Currency, or if it is not desired that the filing of the bond have the effect of a supersedeas, upon the filing of a bond for the costs in the sum of five hundred dollars U. S. Currency, the bond thus filed to be approved by the Clerk of the court, after giving opportunity to counsel for plaintiff to present objections, and to be approved by the undersigned should counsel for plaintiff insist upon his objections in writing.

373 Upon the filing and approval of a supersedeas bond as provided for herein you will forthwith transmit a copy of this order to the court below, and at the same time direct the clerk of that court to return any portion of the record which may have been remanded to him.

Baguio, Philippine Islands, May 13, 1914.

[Seal Corte Suprema, Islas Filipinas.]

A. C. CARSON,
Associate Justice Supreme Court
of the Philippine Islands.

Received and filed in the Clerk's office, May 16, 1914. V. Albert, Clerk.

374 UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 7967.

PORT BANGA LUMBER CO., Plaintiff and Appellee,
vs.
EXPORT AND IMPORT LUMBER CO., Defendant and Appellant.

(Typewritten Copy of Original Allowance of Petition for Appeal Written by Justice Carson.)

The Clerk of the Supreme Court of the Philippine Islands:

Heretofore, to-wit, on the 20th of April 1914, a petition for a writ of error in the above entitled cause was denied by the undersigned, counsel for petitioner having intimated in the oral discussion had thereon that he was satisfied he was not entitled thereto.

Nevertheless, on full consideration of the petition of counsel for defendant for the allowance of an appeal to the Supreme Court of the United States of America, dated the 8th day of April 1914, it is ordered that an appeal to the Supreme Court of the United States from the final decree and judgment heretofore filed and entered herein, be, and the same is hereby allowed; and that a certified transcript of the record, testimony and all proceedings had herein be forthwith transmitted to the said Supreme Court of the United States of America, upon the filing by petitioner of a supersedeas bond in the sum of Twenty Thousand Dollars, U. S. Currency, or if it is not desired that the filing of the bond have the effect of a supersedeas,
375 upon the filing of a bond for the costs in the sum of Five Thousand Dollars, U. S. currency, the bond thus filed to be approved by the Clerk of the Court, after giving opportunity to counsel for plaintiff to present objections, and to be approved by the undersigned should counsel for plaintiff insist upon his objections in writing.

Upon the filing and approval of a supersedeas bond as provided for herein you will forthwith transmit a copy of this order to the court below, and at the same time direct the Clerk of that court to return any portion of the record which may have been remanded to him.

Baguio, Philippine Islands, May 13, 1914.

[Seal of Court.]

(Signed) A. C. CARSON,
Associate Justice Supreme Court of the Philippine Islands.

Received and filed in the Clerk's Office, May 16, 1914. (Sgd.) V. Albert, Clerk.

376 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Port Banga Lumber Company, Manila, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be holden at the City of Washington one hundred and twenty days from the date of this citation pursuant to an appeal duly allowed and filed in the Office of the Clerk of the Supreme Court of the Philippine Islands on the 16th day of May, 1914, in a case wherein the Port Banga Lumber Company is plaintiff and the Export & Import Lumber Company, is defendant, to show cause, if any there be, why the judgment rendered against the said appellant as in said appeal mentioned, should not be corrected and speedy justice be done to the parties in this behalf.

Given under my hand at the City of Manila in the Philippine Islands, this 23rd day of May, 1914.

[Seal Corte Suprema, Islas Filipinas.]

A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands.

Service by copy is admitted this 26th day of May, 1914.

LAWRENCE, ROSS & BLOCK,
By RICARDO PARAS,
Attorneys for the Port Banga Lumber Co.

377 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

(Filed in Supreme Court at 9:50 a. m. June 30th, 1914.)

No. 7967.

PORT BANGA LUMBER CO., Plaintiff and Appellee,
vs.
EXPORT & IMPORT LUMBER CO., Defendant and Appellant.

Supersedeas Bond.

Know all men by these presents that we, the Export & Import Lumber Company, as principal, and F. K. Schnitzler, E. C. McCullough, Harold M. Pitt, Henry W. Elser, and Benjamin Moore, of Manila, as sureties are held and firmly bound unto the Port Banga Lumber Company, in the sum of Twenty Thousand Dollars, United States Currency ($20,000.00), to be paid to the said obligee, his successors, representative- and assigns, to the payment of which well and truly to be made we bind ourselves, our heirs, successors and administrators, jointly and severally by these presents.

Sealed with our seal and dated this 7th day of July 1914.

Whereas, the above-named appellant has presented an appeal to the Supreme Court of the United States to reverse the judg-
378 ment rendered in the above-entitled cause by the Supreme Court of the Philippine Islands.

Now therefore, the condition of this obligation is such that if the above-named appellant shall prosecute the appeal to effect and pay any judgment which may be rendered with interest and costs, if it fails to make good its appeal, then this obligation shall be null and void otherwise to remain in full force and effect.

(Sgd.) EXPORT AND IMPORT LUMBER CO.,
By BENJAMIN MOORE,
General Manager, Principal.
" BENJAMIN MOORE,
" HAROLD M. PITT,
" E. C. McCULLOUGH,
" H. W. ELSER,
" F. K. SCHNITZLER,
Sureties.

In the presence of:—
(Sgd.) CHAS. A. McDONOUGH.
" L. A. BARRETTO.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

F. K. Schnitzler, E. C. McCullough, Harold M. Pitt, Henry W. Elser and Benjamin Moore, the sureties who executed the foregoing bond, being first duly sworn upon oath, each for himself says: that he is a resident and property holder in the Philippine Islands, that he is solvent for the amount written opposite his signature
379 in said obligation, apart from all his debts and obligations and property not subject to execution; and that he executed the foregoing bond as an act of his own free will and deed.

(Sgd.) F. K. SCHNITZLER.
" E. C. McCULLOUGH.
(Sgd.) BENJAMIN MOORE.
" HAROLD M. PITT.
(Sgd.) H. W. ELSER.

Subscribed and sworn to before me this 7th day of July, 1914 at Manila, P. I. Affiants exhibited to me their personal cedulas as follows: F. K. Schnitzler, cedula No. F7470 issued at Manila the 14 day of January, 1914; E. C. McCullough, cedula No. F24937 issued at Manila, the 26 day of February, 1914; Harold M. Pitt, cedula No. F1296 issued at Manila the 2 day of January 1914; Henry W. Elser, cedula No. F2480 issued at Manila the 17 day of February 1914; and Benjamin Moore cedula No. F9433 issued at Manila the 2 day of January, 1914.

(Sgd.) CHAS. A. McDONOUGH.
Notary Public.

My Commission expires December 31, 1914.

Doc. No. 212.
Pag. No. 28.

Approved this 9th day of July 1914.

(Sgd.) A. C. CARSON,
Associate Justice Supreme Court P. I.

Manila, P. I.

[COURT SEAL.]

MANILA, P. I., September 8, 1914.

I certify that the foregoing is a true and correct copy of its original on file in my office.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk Supreme Court P. I.

380 [Stamped:] Clerk's Office, Supreme Court, Philippine Islands. 6 P. M., Aug. *17*, 18, *19*, 1914.

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 7967.

PORT BANGA LUMBER COMPANY, Plaintiff and Appellee,
versus
EXPORT & IMPORT LUMBER COMPANY, Defendant and Appellant.

Petition for Extension of Time to Docket Record with the Clerk of the Supreme Court of the United States.

Now comes the defendant and appellant and respectfully shows:

That the above-entitled cause has been duly appealed to the Supreme Court of the United States; that said appeal has been allowed; and that under Rule 8 of the Supreme Court of the United States the return day for said appeal will be the 20th day of September, 1914.

That the record of said cause was returned to this Court by the Clerk of the Court of First Instance of Zamboanga and the parties were notified of the receipt of said record by the Clerk of the Supreme Court of these Islands on July 25, 1914,—two months after the date of the citation.

That immediately upon the receipt of the said notice the appellant proceeded to make a typewritten copy of the said record, and that the same is nearly completed, with the exception of a few pages
381 of the proceedings in the Supreme Court; but that the time remaining will not be sufficient to compare and certify the transcript of the aforesaid record by the Clerk of this Court so that the same may be in Washington on the return day.

Wherefore, the petitioner respectfully prays that the time be enlarged so that the same will not expire before the 20th day of October, 1914.

Manila, P. I., August 18, 1914.

GIBBS, McDONOUGH & BLANCO,
Attorneys for Defendant and Appellant.

O. K.

382 The foregoing petition for extension of time to docket the record in this cause with the Clerk of the Supreme Court of the United States was granted by resolution of the Supreme Court of the Philippine Islands dated the 19th day of August, 1914, as follows:

"There having been submitted the petition presented by the attorneys for the defendant and appellant in cause No. 7967, entitled Port Banga Lumber Co. versus the Export & Import Lumber Co., requesting, for the reasons therein stated, that the period of 120 days heretofore granted to prepare and forward the record in said cause to the Supreme Court of the United States, be extended by 30 days more, to the end that said period would not expire before the 20th day of October, 1914, the Court said: Allowed." "Mr. Justice Johnson did not take part."

383 [Stamped:] Clerk's Office, Supreme Court, Philippine Islands. Received 11.30 A. M., Sep. 7, 8, 9, 1914.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court.

R. G. No. 7967.

PORT BANGA LUMBER COMPANY, Plaintiff and Appellee,
vs.
EXPORT & IMPORT LUMBER COMPANY, Defendant and Appellant.

Stipulation.

It is stipulated by and between the parties in the above entitled case that the defendant and appellant shall have an extension of an additional thirty (30) days from October 20, 1914, to elevate to the Supreme Court of the United States the record in the above entitled case, so that the time within which to elevate said record shall not expire until the 20th day of November, 1914: provided, however, that the record shall be forwarded from the Philippine Islands by the first mail leaving the port of Manila after this date.

The plaintiff and appellee hereby reserves its objection to the allowance of the appeal herein and its right to move the Supreme Court of the United States to dismiss the said appeal upon the ground that the said Supreme Court of the United States is without jurisdiction to entertain the said appeal.

Manila, P. I., September 8, 1914.

LAURENCE, ROSS & BLOCK,
Attorneys for Plaintiff and Appellee.
GIBBS, McDONOUGH & BLANCO,
Attorneys for Defendant and Appellant.

384 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7967.

PORT BANGA LUMBER CO., Plaintiff and Appellee,
versus
EXPORT & IMPORT LUMBER CO., Defendant and Appellant.

Petition for Extension of Time to Docket Transcript in the United States Supreme Court.

Now comes the defendant and appellant and respectfully shows that the above-entitled cause has been duly appealed to the Supreme Court of the United States of America; that said appeal has been duly allowed; and that under Rule 8 of the Supreme Court of the United States the return day for said appeal will be the 20th day of September, 1914.

That on September 8th, 1914, counsel for the plaintiff and appellee and defendant and appellant signed and filed with the Clerk of this Court a stipulation whereby the defendant and appellant shall have an extension of an additional thirty days from October 20, 1914, to elevate to the Supreme Court of the United States the record in the above-entitled cause, so that the time within which said record should be docketed shall not expire until the 20th day of November, 1914.

385 That on account of the various motions presented by counsel for plaintiff and appellee and other proceedings had in this Court after the allowance of the appeal, it has been impossible to mail the record so that it will be in Washington, D. C., on the return day, but that the defendant and appellant expects to have the said record forwarded to Washington by the mail leaving here on the 12th instant.

Wherefore, defendant and appellant prays that the Honorable Adam C. Carson, the Associate Justice of this Court who allowed the appeal in this case, extend the time for docketing the case in the Supreme Court of the United States so that the same will not expire before the 20th day of November, 1914.

Manila, P. I., September 10th, 1914.

GIBBS. McDONOUGH & BLANCO,
Counsel for Defendant and Appellant.

Upon consideration of the above petition, and it appearing to the undersigned that good and sufficient reason exists therefor, it is ordered that the time for docketing the above cause in the Supreme Court of the United States be, and the same is hereby, extended so that the same will not expire until the 20th day of November, 1914.

Manila, P. I., September 10th, 1914.

[Seal Corte Suprema, Islas Filipinas.]

A. C. CARSON,
Associate Justice of the Supreme Court of the Philippine Islands.

386 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain cause pending in said Court, wherein the Port Banga Lumber Co. was plaintiff and appellee, and the Export & Import Lumber Co. was defendant and appellant, a final judgment was rendered by said Supreme Court on the third day of April, A. D. 1914, in favor of the said Port Banga Lumber Co., and against the said Export & Import Lumber Co., and that on the eighth day of April, A. D. 1914, the said Export & Import Lumber Co. prayed for an order allowing an appeal on its behalf to the Supreme Court of the United States, which was duly allowed on the thirteenth day of May, A. D. 1914.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Supreme — at Manila, P. I., this 10th day of September, 1914.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

387 THE UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing three hundred and eighty-five (385) pages of typewritten matter contain a true and correct translation and transcript of the record and proceedings had in the Court of First Instance of Zamboanga and in the Supreme Court of the Philippine Islands in the case of Port Banga Lumber Co., Plaintiff and Appellee, versus Export & Import Lumber Co., Defendant and Appellant.

In witness whereof, I have hereunto set my hand and affixed the seal of the said Supreme Court this 10th day of September, 1914.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

Endorsed on cover: File No. 24,430. Philippine Islands Supreme Court. Term No. 686. The Export & Import Lumber Company, appellant, vs. The Port Banga Lumber Company. Filed November 7th, 1914. File No. 24,430.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

No. 686.

THE EXPORT AND IMPORT LUMBER COMPANY,
PLAINTIFF IN ERROR,

against

THE PORT BANGA LUMBER COMPANY, LIMITED,
DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

MOTION TO DISMISS WRIT OF ERROR OR TO AFFIRM OR TO TRANSFER TO THE SUMMARY DOCKET.

I.

Now comes the defendant in error, the Port Banga Lumber Company, Limited, by his attorneys of record herein, and moves this honorable court:

First. To dismiss the writ of error herein on the ground that this court has no jurisdiction thereof, neither the Con-

stitution or any statute, treaty, title, right, or privilege of the United States being involved, and the value in controversy being less than $25,000.

Second. To affirm the judgment of the Supreme Court of the Philippine Islands on the ground that it is manifest that this writ of error was taken for delay only, and that it is apparent that the questions raised in the assignment of errors were frivolous for the purposes of an appeal to this court, in that such questions are exclusively within the jurisdiction of the Supreme Court of the Philippine Islands to finally determine.

Third. To transfer this cause for hearing to the summary docket if this court should refuse to dismiss or to affirm, because the cause is of such a character as not to justify extended argument.

CLEMENT L. BOUVÉ,
JAMES ROSS,
Attorneys of Record for Defendant in Error.

Notice of Motion.

The plaintiff in error is hereby notified that the defendant in error will, on the 15th day of March, A. D. 1915, on the convening of the Supreme Court of the United States on that day, or as soon thereafter as the hearing may be had, submit for the consideration of the said court the foregoing motions, and each of them, and the brief in support thereof hereto attached, including portions of the record and of the Organic Act of the Philippine Islands as contained in an appendix thereof, all of which are now served upon you herewith.

CLEMENT L. BOUVÉ,
JAMES ROSS,
Attorneys of Record for Defendant in Error.

Received a copy of the foregoing notice, brief, and appendix thereto attached this — day of January, A. D. 1915.

(Signed) ALLISON D. GIBBS,
Attorney of Record for Plaintiff in Error.

II.

Facts.

This is an action brought by the Port Banga Lumber Company (here the defendant in error) against the Export and Import Lumber Company (here the plaintiff in error) for the purpose of annulling a written contract obtained by fraud, the design of the defrauder in obtaining the execution of the written contract obviously being to bring about a surrender, by the party defrauded, of rights based on a preceding oral agreement dealing with the same subject-matter, and for a recovery from the defrauder based on rights acquired under the oral agreement in question. The party bringing the action sues for a sum amounting, roughly, to P35,000, or $17,500, U. S. currency. The party sued answers with a counter-claim for P17,500, or $8,750, U. S. currency, being the difference between the amount actually contracted for by the defrauder, the Export and Import Company, with the China Import and Export Lumber Company and the amount actually received by the Export and Import Company from the China Company.

Both the Court of First Instance and the Supreme Court find that the venture is a joint venture, and that the Port Banga Company and the Import and Export Company are entitled to equal shares in profits actually received in the course of such venture after the deduction of expenses proved to have been incurred. The Court of First Instance refuses to concede the counter-claim at all and renders judgment in favor of the plaintiff below in the sum of P35,140.23, or $17,570.115, U. S. currency. The Supreme Court on appeal finds that the P17,500 item does not represent a counter-claim, but simply represents a portion of the contract price which the parties to the joint enterprise failed to receive, and is a loss in which they must therefore share equally. The amount adjudicated to the Port Banga Company by the

Court of First Instance is therefore reduced by one-half that sum, to wit, P8,750, final judgment being rendered against the Export and Import Company in the sum of P26,390.23, or $13,195.115, U. S. currency.

III.

Points and Authorities.

A. On the face of the record the amount in dispute is insufficient to give this court jurisdiction.

The act of Congress of July 1, 1902 (the Organic act of the Philippine Islands) provides, in its 10th section:

> "That the Supreme Court of the United States shall have jurisdiction to review, revise, reverse, modify, or affirm the final judgments and decrees of the Supreme Court of the Philippine Islands in all actions, cases, causes, and proceedings now pending therein or hereafter determined thereby in which the Constitution or any statute, treaty, title, right, or privilege of the United States is involved, or in causes in which the value in controversy exceeds twenty-five thousand dollars, or in which the title or possession of real estate exceeding in value the sum of twenty-five thousand dollars, to be ascertained by the oath of either party or of other competent witnesses, is involved or brought in question; and such final judgments or decrees may and can be reviewed, revised, reversed, modified, or affirmed by said Supreme Court of the United States on appeal or writ of error by the party aggrieved, in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the circuit courts of the United States." Sec. 10 of the act of Congress of July 1, 1902.

B. Where the jurisdiction of this court depends upon the amount in controversy, the value giving jurisdiction must be established by a preponderance of evidence.

Enriquez against Enriquez, 222 U. S., 123 and
Same against Same, 222 U. S., 127.

IV.

Argument.

Nowhere does it appear in the record that the amount in controversy even approximates the sum of P50,000, or $25,000 United States currency, necessary to give this court jurisdiction under the act of Congress of July 1, 1902. Nor does the assignment of errors or the petition for the allowance of an appeal suggest the existence of a sufficient amount or any other jurisdictional ground.

What does appear is that such petition was at first denied, apparently, on the ground that the petitioner admitted at the time that he had no justification in law for submitting the petition. (See Appendix, page 27) The record contains no order or resolution of the court disallowing the appeal in the first place; nor, in the order ultimately allowing it, is any reason assigned for the court's change of attitude. This is left a matter of conjecture, since not even any colorable specific ground for appeal appears on the face of the record. Is not this fact sufficient to indicate, *prima facie*, that the writ was sued out for purposes of delay only?

In view of the apparent absence of any jurisdictional ground whatsoever, counsel present may be excused for stating that he has been informed by his correspondents in Manila that the appeal was taken on the theory that the jurisdictional requirement as to amount is met by tacking to the claim of P36,000, made by the Port Banga Company, the counter-claim of P17,500, made by the Export and Import Company, the two together amounting to P53,000, or an amount exceeding $25,000 United States currency. If this is the ground on which the writ is based—and the record reveals no other—its frivolous character can hardly be denied. If anything, the effect of a counter-claim duly established would be to lessen rather than increase the amount in controversy.

V.

Appendix.

Pursuant to the rules and practices of the court, and for the purposes of these motions only, defendant in error has caused to be printed the amended complaint of the Port Banga Lumber Company, here the defendant in error; so much of the answer thereto as defines the counter-claim presented by the plaintiff in error; the stipulation between counsel for the Port Banga Company, plaintiff, and the Export and Import Company, defendant, in the action brought before the Court of First Instance for the Moro Province, referred to by Mr. Justice Carson in the modified decision of the Supreme Court of the Philippine Islands; the findings of fact and adjudication concluding the decision of the Court of First Instance of the Moro Province against the Export and Import Lumber Company; extracts from the decision of the Supreme Court of the Philippines, of February 6, 1914; extracts from the modifying decision of that court of March 27, 1914; the final judgment rendered; the petition for an appeal of April 8, 1914; the petition to file an amended assignment of errors; the order allowing the appeal, and the amended assignment of errors. No original assignment of errors appears of record. Those parts of the record not essential to the consideration of the motion are omitted.

A. Amended Complaint.

Fourteenth Judicial District.

THE UNITED STATES OF AMERICA,
Philippine Islands, Moro Province:

In the Court of First Instance of the District of Zamboanga.

Civil Case No. 275.

PORT BANGA LUMBER COMPANY, *Plaintiff,*
versus
EXPORT AND IMPORT LUMBER COMPANY, *Defendant.*

Annulment of Contract and Damages.

Amended Complaint.

Now comes the above-named plaintiff by its attorneys Yeager and Gibbens, and, leave of court first having been obtained, presents this amended petition and as cause of action against above-named defendant states:

1. The plaintiff and defendant are corporations duly organized and existing according to the laws of the Philippine Islands for the purpose of engaging in commerce therein, and the principal office of the plaintiff in (*sic*) in Zamboanga, Moro Province, P. I., and that of defendant in Manila, P. I.

2. That on or about March or April of 1910 the plaintiff, through F. P. Williamson, its vice-president, and the defendant, through W. W. Payne, its president, made and entered into an oral contract whereby the said parties, plaintiff and defendant, should make and execute a contract to supply an order of pagatpat logs to certain parties in China, which contract should be carried out upon a joint account

basis—that is, after each party thereto had deducted its respective expenses the profits should be equally divided and the defendant herein named should obtain said contract and the plaintiff herein should furnish the logs to fulfill same.

3. And on or about the 6th day of May, 1910, there was made and executed between the Export and Import Lumber Company, defendant herein, and the said China Import and Export Lumber Company, Limited, a contract for the sale of forty thousand (40,000) cubic feet, more or less, of pagatpat logs of various lengths and dimensions by defendant herein to said China Import and Export Lumber Company, Limited, at the price of ninety (90) cents, U. S. currency, or one peso and eighty centavos, Conant (P1.80) per cubic foot, a copy of which contract is hereto attached, marked Exhibit "A," and forms an integral part of this petition.

4. That subsequent to the execution of the contract marked Exhibit "A" between defendant herein and the China Import and Export Lumber Company, Limited, said W. W. Payne, president of the defendant herein, repeatedly, falsely and fraudulently represented and stated to plaintiff herein and to the officers of the said plaintiff company that the defendant herein had signed and executed the aforesaid contract, marked Exhibit "A," but that the best price which could be obtained was fifty-five (55) centavos, Conant, per cubic foot; that he, the said W. W. Payne, had spent large sums of money while in China and in entertaining the representative of the China Import and Export Lumber Company, Limited, while said representative was in Manila; that said moneys had been expended for the purpose of obtaining the execution of the contract marked Exhibit "A"; that he, said Payne, had no record or account of said expenditures; that if the contract set out in paragraph 2 of this petition, providing for the fulfillment of the contract marked Exhibit "A," should be carried out upon the basis of the joint account as previously agreed, that he, said Payne, could furnish no record or account of said expenditures, and

the presentation of an account of several thousand pesos would make it appear that he was defrauding plaintiff herein; but that if a contract should be signed and executed by and between plaintiff and defendant herein providing for the sale of the aforesaid forty thousand (40,000) cubic feet of pagatpat logs by plaintiff to defendant at the price of forty (40) centavos, Conant, per cubic foot, in view of the price of fifty-five (55) centavos, Conant, per cubic foot obtained by defendant from the China Import and Export Lumber Company, Limited, and in view of other facts set out in this paragraph, then, and for those reasons, the stated price of forty (40) centavos per cubic foot to plaintiff company and the balance of fifteen (15) centavos per cubic foot to defendant company would be a just partition of the profits to be obtained and would be approximately the same thing as the joint account basis aforesaid.

5. That each and every one of the statements and representations set out in paragraph 4 and made by W. W. Payne, president of the defendant herein, were false and fraudulent, and were known to be false and fraudulent to the said W. W. Payne, president, and each and every one of said statements and representations was made with the purpose and intention of deceiving and defrauding the plaintiff herein and for the further purpose of inducing the plaintiff herein to consent to the annulment of the oral agreement set out in paragraph 2 hereof, and to sign and execute a contract of sale of the aforesaid forty thousand (40,000) cubic feet of pagatpat logs to the defendant herein at the price of forty (40) centavos, Conant, per cubic foot.

6. That by reason of the said false and fraudulent statements of W. W. Payne, president of the defendant company, the plaintiff herein was deceived and defrauded and induced to sign and execute, and on June 10, 1910, did sign and execute a contract of sale of the said forty thousand (40,000) cubic feet of pagatpat logs to the defendant herein at the rate and price of forty (40) centavos, Conant, per cubic

foot, copy of which contract is hereto attached, marked Exhibit "B," and forms an integral part of this petition.

7. That during the months of October and November the plaintiff herein delivered to defendant herein, and defendant accepted for delivery to said China Import and Export Lumber Company, Limited, the amount of thirty-two thousand and thirty-two (32,032) cubic feet of pagatpat logs, and the defendant herein immediately delivered the aforesaid logs to and the same were accepted and paid for by the China Import and Export Lumber Company, Limited, the logs having been loaded on a steamer at the mill of the plaintiff herein.

8. That subsequent to the aforesaid delivery to and acceptance by the China Import and Export Lumber Company, Limited, of the said thirty-two thousand and thirty-two (32,032) cubic feet of pagatpat logs the plaintiff herein accidentally learned that the defendant herein was receiving ninety (90) cents, U. S. currency, per cubic foot, and not fifty-five (55) centavos, Conant, as had been falsely and fraudulently stated and represented by defendant herein.

9. That plaintiff herein has repeatedly demanded of defendant the fulfillment of the contract between plaintiff and defendant as said contract is set out in paragraph 2 hereof and defendant has refused and continues to refuse to fulfill and comply with the said contract and has refused and still refuses to settle with the plaintiff herein for the aforesaid thirty-two thousand and thirty-two (32,032) cubic feet of logs.

10. That in cutting, hauling, trimming, and preparing the logs and timbers set out in contract marked Exhibit "B" and in otherwise fulfilling said contract marked Exhibit "B," the plaintiff herein has expended the sum of fourteen thousand, six hundred and twenty-two pesos and eighty-six centavos (P14,622.86), Philippine currency, and copy of expenditures so made is hereto attached marked Exhibit "C" and forms an integral part hereof.

11. That, for the reasons set out in this amended petition, the defendant herein is indebted to plaintiff herein in the sum of thirty-six thousand and forty pesos and twenty-three centavos (P36,040.23), Philippine currency, that is to say, one-half of the sum obtained by deducting fourteen thousand, four hundred and twenty-two pesos and eighty-six centavos (P14,422.86), Philippine currency, the value of said thirty-two thousand and thirty-two (32,032) cubic feet of logs at one peso and eighty centavos (P1.80) Philippine currency, or twenty-one thousand, six hundred and seventeen pesos and thirty-seven centavos (P21,617.37) Philippine currency, plus the sum of fourteen thousand, four hundred and twenty-two pesos and eighty- six centavos (P14,422.86) Philippine currency, expended as aforesaid by plaintiff herein.

Wherefore plaintiff prays:

1. That the contract between plaintiff and defendant herein which contract is marked Exhibit "B" be declared null and void;

2. That the prior contract as set out in paragraph 2 hereof be declared to be in full force and effect;

3. That judgment be rendered in favor of plaintiff and against defendant in the sum of thirty-six thousand and forty pesos and twenty-three centavos (P36,040.23) Philippine currency, with costs of suit;

4. For any other remedy or redress provided by law.

Zamboanga, Moro Province, P. I., February 25, 1911.

(Signed) YEAGER AND GIBBENS,

Attorneys for the Port Banga Company, Limited.

B. Answer to Amended Complaint.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Moro Province, Fourteenth Judicial District.

Cause No. 275.

PORT BANGA LUMBER CO., *Plaintiff,*
versus
EXPORT AND IMPORT LUMBER CO., *Defendant.*

Amended Answer (Answer to Amended Complaint).

Comes now the defendant company by its attorneys, A. D. Gibbs and Chas. A. McDonough, and answering the amended complaint:

1st. Denies each and every allegation of said amended complaint which is not hereinafter specifically admitted.

2nd. That the only contract entered into between the parties with reference to the cargo of logs—the subject of this action—is the written contract of June 10th, 1910, a copy of which marked Exhibit "1" for identification is attached hereto and made a part of this answer.

3rd. That on or about the 26th day of August, 1910, the plaintiff received and accepted from the defendant company P5,000.00 on account of said contract of June 10, 1910, and has ever since retained, and still retains the same; by reason whereof plaintiff has ratified said contract, has waived any and all objections thereto, and is estopped from demanding the rescission thereof.

Counter-claim.

As a counter-claim against the plaintiff company, the defendant company alleges:

* * * * * * *

(*f*) That due to the noncompliance with its contract on the part of the plaintiff in the supplying and delivering of said cargo, the China Import and Export Lumber Company, refused to pay to the defendant company the price agreed upon in its said contract and the latter in order to settle its account and compromise the case with the China Import and Export Lumber Company was forced to deduct and did deduct from the contract price of said cargo the sum of $8,750 U. S. currency; all of which appears in an agreement of compromise a copy of which marked Exhibit "3" is attached hereto and made a part of this counter-claim. That said China Import and Export Lumber Company actually suffered damages equal to or in excess of such deduction by reason of the non-fulfillment of said contract by the plaintiff company.

(*g*) That due to the non-fulfillment by the plaintiff of its said contract with the defendant, the latter has suffered damages in the sum of $8,750, U. S. currency, equal to P17,500, Philippine currency.

Wherefore the defendant company prays that judgment be rendered relieving it from all liability on account of the complaint and that judgment be rendered in favor of defendant on its counter-claim against the plaintiff for the sum of P17,500, with costs of suit, and for such other and further relief as may be just and equitable.

Manila, P. I., July 31, 1911.

(Signed) A. D. GIBBS,
CHAS. A. McDONOUGH,
Attorneys for Defendant.

C. Stipulation of Counsel as to Deduction of P17,500.

(YEAGER:) By special agreement of counsel made in open court, it is admitted that the defendant company, the Export and Import Lumber Company, Limited, of Manila, received from the China Export and Import Lumber Company, Limited, of Shanghai, the full contract price for the cargo of pagatpat logs in question, of P1.80 per cubic foot, as fixed in the contract between the defendant company and the China Export and Import Lumber Company, Limited (this contract is marked Plaintiff's Exhibit "A"), less the amount of $8,750, gold—that is to say, P17,500, which was deducted from that contract price in pursuance of an agreement between the defendant company and the China Export and Import Lumber Company, Limited."

D. Concluding Paragraph of the Decision of the Court of First Instance of the District of Zamboanga.

The court finds the following facts proven by a very great preponderance of evidence: First, that the oral joint account agreement was made as alleged; that the second or written contract, marked Exhibit "B," was procured to be made by the plaintiff by means of the fraud of the defendant; that the plaintiff furnished 32,032 cubic feet of logs on the joint account agreement; that the plaintiff's expenses in furnishing the logs amounted to P14,422.86; that there is no evidence showing what the expenses of the defendant were; that the contract price for the logs to the China Export and Import Lumber Company was P1.80 per cubic foot or P57,657.60, and that after deducting the sum of P14,422.86 for the expenses of the plaintiff company the net profit of the transaction was P43,234.74, one-half of which, to wit, P21,617.37, together with P14,422.86, expenses, amounting in all to P36,040.23, is justly due from the defendant company to the plaintiff company, less P900 which the plaintiff

company received from the China company in payment for certain logs shipped.

Judgment is therefore rendered in conformity with the foregoing findings of fact and conclusions of law, setting aside the contract, marked Plaintiff's Exhibit "B," as null and void on account of fraud and that the plaintiff has judgment on the oral joint account agreement for the sum of P35,140.23, with legal interest thereon from the date of commencement of this action, and for the costs.

It is so ordered.

Zamboanga, Moro Province, P. I., January 27, 1912.

(Signed) CHAS. A. LOW,
Judge Court of First Instance,
14th Judicial District.

E. Decision of the Supreme Court of the Philippines of February 6, 1914.

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 7967.

PORT BANGA LUMBER COMPANY, *Plaintiff and Appellee,*
vs.
EXPORT AND IMPORT LUMBER COMPANY, *Defendant and Appellant.*

Submitted January 12, 1914; Decision Promulgated February 6, 1914.

Decision.

CARSON, *J.:*

The facts in this case, as disclosed by the evidence and found by the trial judge, are substantially as follows:

The plaintiff company was the owner of a saw mill, and logging plant near Port Banga, Mindanao, and the defendant company was engaged in the lumber trade in the city of Manila. The two companies had been doing business together for some time, having had dealings with each other aggregating upwards of P100,000. They were on the most cordial terms, and no formal written agreements were ever made between them, their business being transacted orally or by exchange of letters or telegrams, the relations of the two companies finally becoming so intimate that a consolidation of their interests was under consideration. Such were the conditions when, in December, 1909, Mr. F. P. Williamson, the vice-president of the plaintiff company, and Mr. W. W. Payne, the president of the defendant company, met at Manila and discussed the terms and conditions of a lumber contract which Payne believed he could secure in China on a profitable basis. The order that Payne had in view was a very important one, being for a special grade and size of Pagatpat logs, destined for use in the construction of the mausoleum of the late Emperor Kwang Hsu of China. The matter of available woods was discussed, the conversation culminating in an arrangement to "do the business together." In March, 1910, Messrs. Williamson and Payne again met at the office of the defendant company in Manila, Payne having just returned from China, where he had gone for the purpose of securing the contract which has formerly been discussed.

At this meeting Payne produced a telegram from parties in China calling for logs of certain large dimensions, which he stated could be somewhat reduced. The matter was then discussed in detail, Payne proposing that he would secure the order if the plaintiff company would furnish the logs, and holding out as an inducement that if this contract could be secured and filled other valuable contracts would follow. The former conversation in which it had been tentatively arranged "to do the business together" was referred to, and

the interview terminated in a definite and clear-cut oral agreement to undertake the business on "joint account," the defendant company to obtain the contract, secure the best possible price and arrange for financial assistance, while the plaintiff was to furnish the logs through its Mindanao plant. Williamson returned to Zamboanga, and his company at once commenced the preliminary work of locating and getting out the timber. Payne was successful in securing the China order, and on May 6 executed in the name of his company a contract with the China Import and Export Lumber Company, Limited (Exhibit "A"), whereby he agreed to furnish to the said China Company about 40,000 cubic feet of pagatpat logs of certain specified dimensions and in accordance with other conditions set forth in the contract, at the price of 90 cents, United States gold, or P1.80 Philippine currency per cubic foot. Very soon after the execution of this contract with the China Company—about the middle or end of May—Payne went to Zamboanga and at once began machinations by means of which he succeeded in inducing the plaintiff company to modify the original joint account agreement and enter into a much less advantageous contract, which is attached to the present record marked Exhibit "B." He began by suggesting a written agreement, something theretofore unheard of in the dealings between the two companies, giving as his reason for desiring a contract in writing "the China people had required him to sign." Payne grossly misrepresented the facts as to the terms of the contract with the China Company, and repeatedly assured the officers of the plaintiff company that he had been unable to secure a better price for the logs than 55 centavos per cubic foot. Several conversations were had upon this subject between Payne and the representatives of the plaintiff company in which the original joint account agreement was repeatedly referred to and Payne's false statements as to the price obtained by him from the China Company many times reiterated, until

finally the representatives of the plaintiff company, relying upon Payne's false and fraudulent representations consented to the proposed modification, which was subsequently reduced to writing in the form of a contract of purchase and sale dated June 10, 1910 (Exhibit "B"). The plaintiff company proceeded in good faith to carry out the contract, cut and transported the logs to tide-water at the point agreed upon, and, upon the arrival of the steamer chartered by the China Company, entered immediately upon the work with a sufficient force of laborers and adequate equipment, but was seriously hindered and delayed by the defective tackle and equipment carried by the ship. The loading was, however, finally completed, the cargo delivered to its consignee in China, and the agreed price, less certain deductions, paid to the defendant company. The contract lacked but little of completion—was, indeed, practically completed—when Williamson, in the course of a conversation with Mr. Seitz, the representative of the China Company, became cognizant of the fraud that had been practiced upon him by Payne. He at once taxed Payne with his deceit, and gave notice of his intention to rescind the fraudulently obtained contract, but permitted the few remaining logs to be placed upon the steamship, and immediately caused this action to be brought, the complaint having been filed in the Court of First Instance of the Moro province on November 14, 1910, the day on which the loading of the steamer was completed—this being the day upon which the alleged fraud was discovered. Payne's only reply to Williamson's charges of fraud and demand for redress was "that he stood upon the written contract."

The trial judge upon this finding of facts. rendered judgment in favor of the plaintiff company for the sum of P35,140.23, that being the balance due it, as found by him, after annulling the written contract, and allowing it a half share in the net profits of the enterprise.

The principal questions, and, as we think, practically the only questions raised by this appeal, are questions of fact.

Does the evidence sustain the finding of the trial judge that Payne and Williamson had an oral agreement or understanding that their respective companies would undertake on joint account to procure and to fill the contract for the delivery of certain lumber; that, thereafter, Payne, having secured the contract, grossly deceived Williamson as to the terms and conditions under which he secured the contract, and led him to believe that the price to be paid for the lumber under the contract was fifty-five centavos per cubic foot, when the fact was that the price was ninety cents, or P1.80; that by means of these false statements and misrepresentations of fact Payne induced Williamson to execute a written contract whereby he expressly obligated his company to perform its part of the joint undertaking for a fixed price much less than that which it would be entitled to receive under the agreement to secure and fill the contract for "joint account," and that the plaintiff company did in fact deliver the lumber in substantial compliance with the terms of the written contract and at the same time in substantially the manner and form contemplated in the original oral agreement touching the procurement and filling of the lumber contract on joint account.

These findings are all supported by the clear, definite, and unequivocal testimony of the witnesses called by the plaintiff, and although a formal contradiction by the manager of the defendant company was read into the record by consent of counsel, we find nothing therein which would justify us in disturbing the conclusions of fact as found by the trial judge who saw and heard the witnesses testify. * * *

Accepting the facts thus found, it needs no extended discussion of the law or the facts to sustain the rulings of the trial judge whereby he declined to permit the defendant company to "stand on the written contract" and thus profit by an agreement which the plaintiff company was induced to execute by the false and fraudulent misrepresentation of

material and controlling facts by the agents of the defendant company. It is sufficient to say that the question here involved is not the annulment or rescission of a simple contract of purchase and sale on the ground of concealment or misrepresentation by one of the parties of facts touching the anticipated profits or the purposes or objects inducing such party to execute the contract. * * * In making false and misleading statements as to the terms of the contract with the Chinese company as to the prices secured thereunder and as to the prospective profits to be anticipated therefrom, the manager of the defendant company was seeking not merely to induce the manager of the plaintiff company to execute a contract of purchase and sale at the lowest possible price, but to induce him at the same time to forego any rights which he might have acquired under the oral agreement to secure and fill the contract on joint account, and to induce him to accept, in lieu of a half share in the profits, a price per foot for the lumber, a price much less than that to which he would be entitled under the oral agreement. * * *

The judgment entered by the trial court should therefore be and is hereby affirmed, with the costs of this instance against the appellant.

It is so ordered.

(Signed) A. C. CARSON.

We conform:

(S'g'd) C. S. ARELLANO,
Chief Justice.

GRANT T. TRENT,
MANUEL ARAULLO,
Associate Justices.

I do not conform:

(S'g'd) SHERMAN MORELAND,
Associate Judge.

F. Decision of Supreme Court of the Philippines of March 27, 1914.

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 7967.

PORT BANGA LUMBER COMPANY, Plaintiff and Appellee,

vs.

EXPORT AND IMPORT LUMBER COMPANY, *Defendant and Appellant.*

Motion for a New Trial. Decision Promulgated Feb. 6, 1914. March 27, 1914.

Decision.

CARSON, *J.:*

Upon due consideration of written briefs of counsel we are of opinion that our decision in this case directing the entry of judgment affirming the judgment of the court below should be modified by reducing the amount of the judgment entered in the court below by the sum of P8750, being one-half the amount which "by special agreement of counsel made in open court it is admitted" was deducted from the full contract price "in pursuance of an agreement between the defendant company and the China Export and Import Company, Ltd."

We think that it is perfectly clear that upon appellee's general theory of the transaction, which was upheld in our decision, it was error on the part of the trial judge to base his calculation of the net profits of the transaction upon an assumption that the amount of the gross profits was the contract price for the logs actually delivered. The amount actually received was P17,500 less than the contract price,

as appears from the stipulation of counsel set forth at page 95 of the stenographic notes. N. B.—In the absence of evidence tending to disclose that this deduction was made fraudulently or with purpose to secure an unfair advantage by one of the parties to the joint undertaking, we think that the estimate of net profits by the trial judge must be corrected in this regard. * * *

The petition of appellant for a rehearing and a new trial is denied, but the decision heretofore filed in this case is hereby amended so as to direct the modification of the judgment entered in the court below by reducing the amount thereof by the sum of P8,750 and affirming the judgment thus modified, with costs against the appellant.

It is so ordered.

(S'g'd) A. C. CARSON.

We conform:

(S'g'd) C. S. ARELLANO, *Ch. J.*
GRANT T. TRENT,
MANUEL ARAULLO,
Associate Judges.

NOTE.—This stipulation, appearing on page 246 of the record as paged in the copy docketed in this court, is set out in full in this appendix.

G. Judgment.

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

File No. 7967.

PORT BANGA LUMBER COMPANY, *Plaintiff and Appellee,*
versus
EXPORT AND IMPORT LUMBER COMPANY, *Defendant and Appellant.*

Judgment.

APRIL 3, 1914.

The court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the court upon the record, its decision and order for judgment having been filed on the sixth day of February, A. D. nineteen hundred and fourteen, and March 27, 1914.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Zamboanga, dated the 27th day of January, nineteen hundred and twelve, and from which the above-entitled appeal was taken, be, and the same is hereby modified, reducing the amount thereof by the sum of P8,750 and affirming same in all other parts, with the cost of this instance against the appellant.

It is further ordered that the plaintiff recover from the defendant the sum of P40.00, as costs.

(Sgd.) V. ALBERT,
[COURT SEAL.] *Clerk of the Supreme Court of the Philippine Ieslands.*

MANILA, P. I., September 8, 1914.

I certify that the foregoing is a true and correct copy of its original on file in my office.

(Sgd.) V. ALBERT,
Clerk Supreme Court, P. I.

H. Petition for an Appeal.

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

No. 7967.

PORT BANGA LUMBER COMPANY, *Plaintiff and Appellee,*
v.
EXPORT AND IMPORT LUMBER COMPANY, *Defendant and Appellant.*

Petition for an Appeal.

The above-named defendant, conceiving itself aggrieved by the judgment made and entered on the second day of April, nineteen hundred and fourteen in the above entitled cause, does hereby appeal from the said judgment and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Appellant further prays that the judgment be superseded upon the giving of a supersedeas bond in such sum as this court may fix.

Manila, P. I., April 8, 1914.

(Sgd.) GIBBS, McDONOUGH AND BLANCO,
Attorneys for Defendant and Appellant.

I. Petition to File Amended Assignment of Errors.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7967.

PORT BANGA LUMBER COMPANY, *Plaintiff and Appellee,*
v.
EXPORT AND IMPORT LUMBER COMPANY, *Defendant and Appellant.*

Petition to File Amended Assignment of Errors.

Comes now the defendant and appellant in the above-entitled cause and respectfully requests permission to file the attached amended assignment of errors in lieu of the original one heretofore filed with its petition and prayer for an appeal to the Supreme Court of the United States.

MANILA, P. I., May 28, 1914.

(S'g'd) GIBBS, McDONOUGH AND BLANCO,
Attorneys for Defendant and Appellant.

Permission prayed for above granted this fourteenth day of June, 1914, the petition having been submitted June 13, 1914.

BAGUIO, P. I., June 14, 1914.

[COURT SEAL.] A. C. CARSON,
Associate Justice, Supreme Court,
Philippine Islands.

J. Order Allowing the Appeal.

UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

R. G. No. 7967.

PORT BANGA LUMBER COMPANY, *Plaintiff and Appellee,*
v.
EXPORT AND IMPORT COMPANY, *Defendant and Appellant.*

(*Typewritten Copy of Original Allowance of Petition for Appeal, Written by Justice Carson.*)

The Clerk of the Supreme Court of the Philippine Islands:

Heretofore, to wit, on the 20th of April, 1914, a petition for a writ of error in the above-entitled cause was denied by the undersigned, counsel for the petitioner having intimated in the oral discussion had thereon that he was satisfied he was not entitled thereto.

Nevertheless, on full consideration of the petition of counsel for the defendant for the allowance of an appeal to the Supreme Court of the United States of America, dated the 8th day of April, 1914, it is ordered that an appeal to the Supreme Court of the United States from the final judgment and decree heretofore filed and entered herein, be, and the same is hereby allowed; and that a certified transcript of the record, testimony and all proceedings had herein be forthwith transmitted to the Supreme Court of the United States of America, upon the filing by the petitioner of a supersedeas bond in the sum of twenty thousand dollars U. S. currency, or if it is not desired that the filing of the bond have the effect of a supersedeas, upon the filing of a bond for the costs in the sum of five thousand dollars U. S. currency, the bond thus filed to be approved by the clerk of

the court, after giving opportunity to counsel for plaintiff to present objections, and to be approved by the undersigned should counsel for plaintiff insist upon his objections in writing.

Upon the filing and approval of a supersedeas bond so provided herein you will forthwith transmit a copy of this order to the court below, and at the same time direct the clerk of that court to return any portion of the record which may have been remanded to him.

BAGUIO, PHILIPPINE ISLANDS, May 13, 1914.

[SEAL OF COURT.]

(S'g'd) A. C. CARSON,
Associate Justice, Supreme Court,
Philippine Islands.

Received and filed in the clerk's office, May 16, 1914.

(S'g'd) V. ALBERT, *Clerk.*

K. Amended Assignment of Errors.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 7967.

PORT BANGA LUMBER CO., *Plaintiff and Appellee,*
versus
EXPORT AND IMPORT LUMBER CO., *Defendant and Appellant.*

Amended Assignment of Errors.

The defendant prays an appeal from the final decree of this court to the Supreme Court of the United States, and assigns for error:

1.

The Supreme Court of the Philippine Islands erred in affirming the decision of the trial court overruling defendant's demurrer to the amended complaint.

2.

The Supreme Court of the Philippine Islands erred in affirming the decision of the trial court overruling the objections of counsel for defendant to the evidence of an oral agreement preceding the execution of the written contract.

3.

The Supreme Court of the Philippine Islands erred in affirming the decision of the trial court finding that the parties entered into an oral joint account agreement previous to the execution of the written contract.

4.

The Supreme Court of the Philippine Islands erred in

affirming the decision of the trial court declaring null and void and rescinding the written contract of June 10th, and in reviving and declaring in full force and effect in its stead the alleged previous oral joint account agreement.

5.

The Supreme Court of the Philippine Islands erred in refusing to allow defendant's counter-claim for P17,500.

6.

Assuming the existence of the alleged joint account venture the Supreme Court of the Philippine Islands erred in allowing the alleged expenses of the plaintiff in connection therewith without ordering those of the defendant to be ascertained and allowed and in rendering any money judgment against the defendant without first returning the case to the Court of First Instance for a liquidation of accounts between the alleged partners.

7.

Assuming the existence of the alleged joint account venture the Supreme Court of the Philippine Islands erred in allowing the alleged expense and damages of the plaintiff in connection therewith (*a*) because the expenses incurred constituted the plaintiff's contribution of capital to the alleged joint account venture; (*b*) because a large portion of the alleged expenses were incurred in getting out logs which were not delivered under the alleged joint account contract, but were kept and disposed of by the plaintiff for its own use and benefit, and (*c*) because the alleged damages suffered by the plaintiff and included as expenses are remote and speculative and not chargeable in any event to the alleged joint account venture.

8.

Assuming the existence of the alleged joint account venture the Supreme Court of the Philippines erred in refusing

to make any allowance to the defendant for the P5,000 advanced to the plaintiff on account of the logs of the alleged joint enterprise.

9.

Assuming the existence of the alleged joint account venture the Supreme Court of the Philippines erred in refusing to make allowance to defendant for the expenses incurred by it in connection with the business of the alleged joint enterprise.

10.

Assuming the existence of the alleged joint account venture the Supreme Court of the Philippine Islands erred in making allowance to plaintiff as expenses for amny (*sic*) items which should not be charged to the account of the alleged joint enterprise.

11.

The Supreme Court of the Philippine Islands erred in rendering judgment in favor of the plaintiff and against the defendant.

Wherefore defendant and appellant prays that said decision, judgment and decree be reversed and judgment rendered in its favor with costs.

Manila, P. I., May 28, 1914.

GIBBS, McDONOUGH & BLANCO,
Attorneys for Defendant and Appellant.

In the Supreme Court of the United States

OCTOBER TERM, 1914

No. 686

THE EXPORT & IMPORT LUMBER COMPANY,
Appellant,

against

THE PORT BANGA LUMBER COMPANY, LIMITED.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS

Argument Against Motion to Dismiss (Writ of Error) Appeal

INTRODUCTORY STATEMENT

This is not a writ of error as erroneously assumed by Counsel for Appellee but an appeal.

In the absence of the undersigned, his partner as a precautionary measure presented simultaneously both a petition for a writ of error and for an appeal. When the application for the writ of error came on for hearing, the undersigned stated to Justice Carson that it was not a law case but an action in equity and was therefore not the subject of a writ of error. Hence the statement of Justice Carson in his

order allowing the appeal (Exhibit "J" p. 27 appellee's motion) to the effect that Counsel for Appellant intimated that he was satisfied, he was not entitled to the writ of error. Justice Carson therefore denied the writ of error and having heard Counsel for Appellant at a later date upon the petition for an appeal granted the same.

Statement of the Case

On the 14th day of November, 1910, the Port Banga Lumber Company, appellee herein, filed its original complaint to annul a written contract of sale, to supplant the same by an alleged previous oral joint account agreement and for an accounting which complaint was on February 25, 1911, amended, demanding judgment against the Export & Import Lumber Company, appellant herein, for the sum of Thirty-six thousand forty pesos (₱36,040.23) and twenty three cents as its share of the profits of the alleged joint account venture (pp. 1 and 2, and 9 to 18 incl. original typewritten record). On July 31st, 1911, appellant herein, filed an answer alleging that the only contract entered into between the parties with reference to the cargo of logs in controversy was a written contract of sale and denying any liability on account of the matters alleged in the complaint as amended, and presented at the same time a counterclaim against appellee for damages in the sum of ₱17,500.00 which appellant had been compelled to deduct from the price at

which it had contracted to sell the cargo of logs previous to its purchase from appellee, due to the failure of appellee to comply with its said contract of sale with appellant.

(See Exhibit "B" p. 13 Appellee's printed motion to dismiss.)

On January 12th, 1912, the Court of First Instance rendered judgment in favor of appellee and against appellant for the sum of ₱35,140.-23 with legal interest (6% per annum) from the commencement of the action (Nov. 14, 1910) and denied appellant's counterclaim.

(See original typewritten record pp. 117 to 130 incl.)

From the judgment of the Court of First Instance, appellant appealed to the Supreme Court of the Philippine Islands.

On January 12th, 1914, the Supreme Court of the Philippine Islands affirmed the judgment of the trial Court, Justice Sherman Moreland dissenting.

(pp. 350 to 358 original typewritten record.)

On March 27, 1914, the Supreme Court of the Philippines modified its previous decision by reducing the amount of the judgment of the lower Court by the sum of ₱8,750.00.

(Exhibit "F" p. 22, Appellee's motion to dismiss.)

On the 3rd of April, 1914, judgment was entered in accordance with the decision, as modified, of the Supreme Court of the Philippines.

(Exhibit "G" p. 24 Appellee's motion to dismiss.)

From the last mentioned judgment this appeal was allowed, appellant assigning as errors among others, the affirmance of the judgment of the trial Court as modified and the denial of appellant's counterclaim for ₱17,500.-00.

(See pp. 25 to 31, Appellee's motion to dismiss.)

The amount of the judgment of the Supreme Court of the Philippines in favor of appellee against appellant was ₱26,390.23 with interest at 6% from the date of appellee's original complaint November 14, 1910, to April 3, 1914, equivalent to ₱31,751.84 or $15,875.92 U. S. Currency.

The amount of appellant's counterclaim on the date of the judgment of the Supreme Court of the Philippines was ₱17,500.00 with interest at 6% from July 31, 1911, the date of presentation thereof in the Court of First Instance equivalent to ₱20,305.83 or $10,152.91 U. S. Currency.

The total amount in controversy on April 3, 1914, the date of the judgment appealed from was $26,028.83 U. S. Currency, as shown on the face of the pleadings and judgments of the Court of First Instance and of the Supreme Court of the Philippines.

Calculating interest on the counterclaim from the date of the judgment of the trial Court (Jan. 27, 1912) to the date of the judgment of the Supreme Court (April 3, 1914) as required by Sec. 510 of the Code of Civil Procedure of

the Philippines and eliminating the interest between the date of presentation and that of the judgment of the trial Court, the counterclaim amounted on the date of judgment of the Supreme Court of the Philippines to ₱19,-792.50 or $9,896.25 U. S. Currency, making the total amount in controversy on that date $25,772.17.

Argument

The statement of Counsel for appellee (p. 6 motion to dismiss) that "if anything, the effect of a counterclaim would be to lessen rather than increase the amount in controversy," discloses a lamentable ignorance of the pleadings and of the entire case.

Appellant entered into a written contract to deliver within a fixed period to a firm of lumber dealers in Shanghai, a cargo of logs of specified dimensions at a stipulated price per cubic foot and then sub-let the contract by written agreement upon precisely the same conditions except as to price to appellee.

After the cargo was delivered to the Shanghai firm aboard the ship supplied for that purpose and the contract had been fully executed, the appellee having learned that appellant was making more out of the transaction than it (appellee) was and desiring to repudiate the written contract of sale, filed its complaint alleging that previous to the execution of the written contract of sale the parties had an oral agreement that any orders for lumber which

might be secured by appellant in China should be filled by appellee on joint account and that appellee was induced to abandon the oral joint account agreement and to enter into the contract of sale through the fraudulent misrepresentations of appellant's representative as to the price he was receiving from the Shanghai firm.

Appellant answered denying the alleged oral joint account agreement and insisting, that the only agreement existing between the parties was the written contract of sale. This answer was accompanied by a counterclaim in which appellant alleged that appellee failed to fulfill the terms of its written contract with appellant and as a result thereof the latter was compelled to deduct ₱17,500.00 from the price agreed to be paid for the cargo by the Shanghai lumber firm and for which sum as damages appellant prayed judgment against appellee. (p. 14 motion to dismiss.)

There was nothing speculative about the amount of the counterclaim as it was the subject of a stipulation in open Court.

(p. 15 motion to dismiss.)

In its original decision the Supreme Court not only disallowed appellant's counterclaim of ₱17,500.00 with interest but held the latter accountable to the alleged joint account enterprise for this ₱17,500.00 which it had failed to receive from the Shanghai lumber firm due to the non fulfillment by appellee of its written contract with appellant. This decision would

have resulted in a double loss to appellant on account of the item of ₱17,500.00 which had been deducted from the price stipulated to be paid for the cargo by the Shanghai firm to appellant. In its modified decision reducing the judgment against appellant by ₱8,750.00, that is one-half of the item of ₱17,500.00, appellant was relieved from accounting to the joint account enterprise for alleged assets never realized, but was still denied any relief on account of its counterclaim for the ₱17,500 with interest lost by reason of appellee's failure to comply with its written contract of sale. It is therefore indisputable that appellant was allowed nothing on account of its counterclaim and that the entire amount thereof with interest, in addition to the amount of the judgment in accordance with the modified decision against appellant aggregating more than $25,000.00 U. S. Currency, was still in controversy on the date of that judgment.

In support of our contention that the amount of the counterclaim should be added to the amount of the judgment against appellant to make up the jurisdictional amount, we cite the following cases:

Block v. Darling, 35 L. ed. (U. S.) 476;

Harten v. Loffler, 53 L. ed. (U. S.) 568;

Buckstaff v. Russell & Co., 38 L. ed. (U. S.) 292.

Dushane v. Benedict, 30 L. ed. (U. S.) 810.

The only remaining point for determination is as to the right to add interest to the amount of the counterclaim up to the date of the judgment appealed from, in order to complete the jurisdictional amount. There could be less excuse for discussion on this point had the counterclaim contained a specific prayer for interest. The prayer of the counterclaim is for "₱17,500.00 with costs of suit and for such other and further relief as may be just and equitable." There can be no serious controversy as to the right of appellant to recover interest under this general prayer from the date of filing the counterclaim.

> "As a general rule, under the Codes, the complainant may ask for general relief as was ordinarily done in equity, and where such a prayer is made, the Court may grant any relief to which the complainant is entitled upon the allegations of the complaint and the proofs introduced at the trial."
>
> 31 Cyc 111.
>
> "Interest allowed to a defendant upon a counterclaim should be computed from the date of the answer."
>
> Linsangan v. Linsangan, 11 Ph. Rep., 521.
>
> Arts. 1100 and 1108 Civil Code; Gutierrez Hermanos v. Fuentebella, 13 Ph. Reps. 74.

Furthermore if the Supreme Court of the Philippines had sustained appellant's conten-

tion it would have had no option but to allow interest on the amount of the counterclaim from the date of the judgment of the trial Court under Section 510 of the Code of Civil Procedure of the Philippines which provides:

> "*Interest on Judgment Affirmed.*—When the Supreme Court shall affirm a judgment of a court below, for the recovery of money, *or shall reverse a judgment of a court below, and award a sum of money as debt or damages, it shall direct that interest be added to the original judgment or sum determined to be due, from the date of the former judgment until the date of the final judgment,* at the rate of six per cent per annum." (Italics ours.)

As a matter of law, the judgment, had it been favorable to appellant, would have included interest from the date of filing the answer but so far as the interest from the date of the judgment of the trial court is concerned, the provision above quoted is mandatory as to the inclusion thereof in the amount found due and this provision is in no manner dependent upon the form of the prayer for relief.

In the case of Massachusetts Benefit Association v. Miles, 37 L. ed., (U. S.) 834, this Honorable Court expressly held that a similar statute of Pennsylvania requiring interest to be added to the amount of a verdict as in the case of a judgment from its date, whether by the court of original jurisdiction or by the Supreme Court, was the determining factor con-

ferring jurisdiction upon this Court and declared such interest properly added in order to complete the requisite amount to confer such jurisdiction.

> 34 L. ed. (U. S.) 835; see also Ho'den v. Freedman's Saving & T. Co., 100 U. S. 72 (25 L. ed. 567) and Ohio v. Frank, 103 U. S. 697 (26 L. ed. 531) holding that the question of interest is always one of local law.

As we understand the decisions of this Honorable Court, there is no conflict as to the general rule that where interest antecedent to the judgment appealed from is or must be included in such judgment, and the amount, with the added interest, exceeds the necessary amount, jurisdiction will attach.

> The Patapsco v. Boyce, 20 L. ed. (U. S.) 457;
>
> The Rio Grande v. Otis, 22 L. ed. (U. S.) 60;
>
> Zeckendorf v. Johnson, 123 U. S. 617; 31 L. ed. 277, 278;
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> Quebec Steamship Co. v. Merchant, 33 L. ed. (U. S.) 656;
>
> Bank of the U. S. v. Daniel et al. 12 Pet 32; 9 L. ed. 989.

The rule that the jurisdiction of this Court depends upon the amount of the judgment exclusive of interest thereon refers to interest

accruing after the judgment appealed from, that accruing before judgment being properly included.

New York Elevated R. Co. v. Fifth National Bank, 118 U. S. 608; 30 L. ed. 259.

We also understand that the defendant, in respect to his counterclaim is on equal footing with the plaintiff as to his complaint with reference to the right of appeal or in other words that the defendant in so far as his counterclaim is concerned is the complainant and the plaintiff the defendant.

If a complainant sues his adversary in the Philippines for a sum less than $25,000.00, U. S. currency, and is defeated successively by judgments of the Court of First Instance and of the Supreme Court, and if interest calculated on the amount of his claim between the dates of the two judgments is sufficient to increase it to a sum in excess of $25,000.00, U. S. currency, applying Sec. 510 of the Code of Civil Procedure in the light of the decision in the case of Massachusetts Benefit Association v. Miles (supra) it would seem indisputable that the amount in controversy on the date of such adverse decision of the Supreme Court of the Philippines would include such interest because by mandate of the local statute it must be included in the event of a favorable judgment and such a complainant would therefore have the right of appeal to this court. Inasmuch as the same local statute and the

same rule applies to counterclaims, it must be admitted that the amount in dispute in respect to appellant's counterclaim on the date of the judgment of the Supreme Court was at least $9,896.25, U. S. currency, which, added to the judgment against appellant amounting to $15,875.92, made the total amount in dispute in excess of $25,000.00, U. S. currency.

In view of the fact that by mandate of the local statute the amount demanded in every complaint or counterclaim, when sustained by the Supreme Court of the Islands, carries with it interest from the date of the judgment of the trial court, whether favorable or unfavorable to the demandant, it is difficult to conceive how the interest can be separated from the principal sum demanded in arriving at the amount in dispute by any reasonable interpretation of the language "value in controversy" employed in the Act of Congress of July 1st, 1902.

If this Honorable Court should reverse the Supreme Court of the Philippines as to the judgment in favor of appellee and should sustain appellant's counterclaim. the case would be remanded with instructions to enter judgment in favor of appellant for the amount demanded in the counterclaim, which, by virtue of the provision of Sec. 510 of the Code of Civil Procedure would necessarily include interest not only from the date of the adverse judgment of the Court of First Instance to that of the adverse judgment of the Supreme Court of the Islands from which this appeal is

prosecuted but also until the date of the final judgment in favor of appellant which might be ordered by this Court. This seems to us a conclusive test of the "value in controversy" under appellant's counterclaim on the date of the judgment appealed from.

The law requiring the interest to be included in every judgment of the Supreme Court such interest is as directly in dispute as the principal sum demanded, and such interest being directly in dispute it would be a contradiction of terms to say it forms no part of the "value in controversy."

The decisions of this Honorable Court involving cases where interest on the principal sum demanded in the complaint or counterclaim may be added or not according to the discretion of the appellate tribunal, would seem to have no application to cases where the local statute requires such interest to be added and thereby makes it an absolutely definite and certain part of the amount directly in controversy.

The facts supporting our contention as to the amount in controversy appear on the face of the pleadings and judgments and therefore if our conclusions therefrom are correct there is no room for discussion as to the preponderance of evidence establishing the value in controversy.

Anent the epithet "defrauder" with which counsel for appellee see fit to designate appellant, no doubt with the hope that the court may be

unconsciously prejudiced against the latter in resolving this motion, a digression may be pardoned to the extent of stating that the only proof offered in support of this oral joint account agreement was the testimony of the vice-president of appellee as to an alleged conversation had in Manila between him and the manager of appellant previous to the latter's departure for Shanghai, to the effect that if he (appellant's manager) succeeded in securing any orders for lumber in China they should be filled by appellee on joint account. There was no pretense of any stipulation in this conversation as to prices, quantity, time of delivery or any other terms which would have been indispensable to have made the alleged oral joint account agreement binding upon appellee had it seen fit to repudiate it. At that time no logs or lumber had been sold or contracted in China. (See pp. 143, 144, 162, 163, original typewritten record.)

Moreover, the alleged oral joint account agreement was evidenced by no written memorandum and, under the provisions of Art. 240 of the Commercial Code in connection with Art. 51 of the same code, could not be legally established by the testimony of witnesses without corroborating written evidence, or, in other words, was within the statute of frauds. But accepting as true the interested statement of appellee's vice-president, his conversation with appellant's manager amounted, at most, to nothing more than mere talk of possible future

trade entirely in prospective and which no sensible business man could have considered as legally binding upon anyone. Long after the alleged conversation appellant, by its own efforts and at its own expense, succeeded in securing an order for a cargo of logs to be used in the construction of a mausoleum for the deceased Emperor of China at an extraordinary price. Appellant could have sub-let the contract to any one of a dozen different concerns on equally as favorable terms as those agreed upon with appellee, which were on the basis of the market value of the logs.

According to appellee and the court, appellant's fraud consisted in misrepresentations of its manager as to the price he was receiving from his customer in China for the logs, a business secret, which, had he divulged would have deprived his company of the legitimate profits of a fortunate sale and would have properly led to his own dismissal from its service. It was none of appellee's business how much appellant was receiving for the cargo, unless a binding joint account agreement had been previously perfected. Such is the basis for dubbing appellant "the defrauder" and such was the basis for the judgment appealed from.

It is true that it was concurred in by the necessary majority of the members of the Supreme Court but it is difficult for us to believe that they fully informed themselves as to either the evidence or the law applicable thereto because in our opinion the judgment violates

the most elementary principles of contracts and of evidence. In this opinion we believe Justice Moreland is in accord with us.

For the reasons stated appellant respectfully asks that appellee's motion to dismiss be denied.

ALLISON D. GIBBS,
Attorney of record for appellant,
Manila, P. I.

Received copies of the foregoing argument this.....day of February, 1915.

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By

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Attorney of record for appellee.

EXPORT AND IMPORT LUMBER COMPANY *v.* PORT BANGA LUMBER COMPANY.

APPEAL FROM THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 686. Argued March 15, 1915.—Decided April 26, 1915.

Where the jurisdiction of this court depends on the amount involved, the appeal must be dismissed unless the record fairly shows that the value in controversy exceeds the amount fixed by statute, the criterion being that which is actually in dispute.

Where defendant appeals from a judgment against it and plaintiff does not appeal although its prayer was for a larger amount, the amount in controversy is the amount of such judgment and the total amount of appellant's claim against plaintiff, and unless they aggregate the statutory amount there is no jurisdiction.

Under the Act of July 1, 1902, § 10, c. 1369, 32 Stat. 691, 695, this court has no jurisdiction of an appeal from the Supreme Court of the Philippine Islands unless the amount in controversy exceeds $25,000, and as that amount is not shown to be in controversy in this case the appeal is dismissed,

THE facts, which involve the jurisdiction of this court of appeals from the Supreme Court of the Philippine Islands, are stated in the opinion.

Mr. Clement L. Bouve and *Mr. James Ross* for defendant in error in support of the motion.

Mr. A. D. Gibbs for plaintiff in error in opposition to the motion.

Memorandum opinion by MR. JUSTICE MCREYNOLDS, by direction of the court.

This is an appeal from the Supreme Court of the Philippine Islands, allowed May 13, 1914. Our jurisdiction de-

pends on the amount involved; and a motion to dismiss must be sustained unless from a consideration of the whole record it fairly appears that "the value in controversy exceeds twenty-five thousand dollars." Act of July 1, 1902, § 10, c. 1369; 32 Stat. 691, 695. What is actually in dispute here is the criterion. *Bowman* v. *Chicago & Northwestern Railway Co.*, 115 U. S. 611, 613; *Martinez* v. *International Banking Corporation*, 220 U. S. 214, 221.

To avoid possible confusion their United States currency equivalents are used herein instead of the Philippine peso and centavo.

The Port Banga Lumber Company instituted a proceeding November 14, 1910, and afterwards filed an amended complaint, against appellant, the Export and Import Lumber Company, wherein it alleged that in March or April, 1910, the two companies entered into an oral arrangement to sell logs in the China trade upon joint account—the proceeds to be appropriated first to expenses and then equally divided; appellant on May 6, 1910, agreed to furnish to the China Import and Export Lumber Company logs at ninety cents per cubic foot; thereafter falsely pretending such stipulated price was twenty-seven and one-half cents appellant induced complainant to consent to an annulment of the oral arrangement between them and enter into a written one dated June 10, 1910, under which the latter agreed to supply the logs for twenty cents per cubic foot; and that at an expense of $7,211.43 it delivered 32,032 cubic feet and appellant collected therefor ninety cents per foot—$28,828.80. The complainant accordingly asked that the writing of June 10th be annulled; the oral contract be declared in force; and in harmony therewith judgment for $18,020.12.

The Export and Import Lumber Company denied the allegations in the complaint, except as specifically admitted, but said the written contract of June 10th was in

force and $2500.00 had been paid thereunder and accepted by complainant. It further set up that by the contract of May 6th it became obligated to furnish the China Import and Export Lumber Company designated logs within a specified time; on June 10th it transferred this duty to the complainant which failed fully to comply therewith; and as a consequence $8,750.00 had to be deducted from the sale price which otherwise would have been received. It therefore claimed damages to that extent and asked judgment accordingly.

Counsel admitted of record that 32,032 cubic feet of logs were delivered by complainant to the China Import and Export Lumber Company; and unquestionably appellant collected therefor 90 cents per foot, $28,828.80, less $8,750.00.

The court below held (26 Phil. Rep. 602; 27 Phil. Rep. *) the contract of June 10th was procured by fraud; the rights of the parties depended upon the oral agreement; the deduction of $8,750.00 from stipulated sale price should be taken into consideration; complainant was entitled to its expenses of $7,211.43; and that the balance of amount actually collected by appellant should be equally divided. A certain credit of $450.00, explanation of which is now unnecessary, having been allowed, judgment was entered April 3, 1914, against appellant for $13,195.12, together with $2,683.01 interest from November 14, 1910, when the original complaint was filed—in all $15,878.13. The Port Banga Lumber Company has not appealed and this is the maximum recovery which appellant can suffer.

According to appellant's theory the written contract of June 10th remained in force. A settlement thereunder would require a debit against it for logs delivered—32,032 cubic feet at twenty cents—of $6,406.40, and necessitate credits of $2,500.00, alleged payment on account, and $8,750.00, damages sustained. The resulting balance of $4,843.60, with interest from November 14, 1910, to

* Volume 27, not yet published and received.

April 3, 1914, $984.87, or $5,828.47, is the greatest sum for which it could have recovered judgment.

The maximum amount fairly in dispute is therefore the judgment of $15,878.13 against appellant, plus $5,828.47 which it sought to recover from appellee—a total of $21,706.60. *Dushane* v. *Benedict*, 120 U. S. 630, 636; *Buckstaff* v. *Russell*, 151 U. S. 626, 628; *Harten* v. *Löffler*, 212 U. S. 397, 403; *Keller* v. *Ashford*, 133 U. S. 610, 617; Philippine Code of Civil Procedure, § 510.

The value in controversy being under $25,000.00, the appeal must be

Dismissed.